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Report of the Independent Expert on the situation of human rights in Somalia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the situation of human rights in Somalia, Bahame Tom Nyanduga, pursuant to its resolution 36/27. In the report, the Independent Expert highlights a progressive improvement of the human rights context, while noting considerable challenges that negate the full realization of human rights in Somalia. The positive developments include the process of establishing the National Human Rights Commission and the fact that Somalia ceased the inhumane practice of public executions in Mogadishu of persons sentenced to death.

The many challenges that remain include the continued violation of the rights to freedom of expression and opinion, by both the federal and State security forces, the violation of the rights of internally displaced persons, the absence of a legal framework for the protection of persons with disabilities and the plight of the rights of children who had been abducted by Al-Shabaab and subsequently recaptured or who had escaped. Somalia retains the death penalty despite having accepted the recommendations made in 2011 as part of the universal periodic review process to adopt a moratorium.

Other challenges include the continued existence of sexual and gender-based violence, in spite of campaigns and the implementation of the joint communiqué between the Federal Government of Somalia and the United Nations on the prevention of sexual violence, concluded on 7 May 2013. Al-Shabaab remains a potent threat in spite of the continued fight by troops from the Somalia National Security Forces and the African Union Mission in Somalia (AMISOM). The group has continued to carry out acts of terrorism, such as the 14 October 2017 bombing in Mogadishu that left hundreds of civilians dead. It also targets public officials and extorts taxes from the civilian population in areas under its control.

Somalia is still undergoing transition in its governance and the peacebuilding process. It has witnessed progress as well as setbacks in the political, social and economic spheres, which have included the removal of high-placed State officials from public office. Within a period of few weeks, the Speaker of Parliament and Chief Justice were removed from office. Somalia has observed a neutral stance vis-à-vis the Gulf crisis, thus avoiding potential destabilization owing its historical connections and proximity to the region.

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While the State formation process was completed in 2016, border disputes and territorial claims persist, in particular between Puntland and Galmudug. There is also an active conflict between Puntland and Somaliland in the Sool and Sanaag regions.

In the humanitarian sphere, the Independent Expert notes the almost twofold increase in internal displacement. The Independent Expert commends the humanitarian response for having averted loss of lives following the drought in 2017. He notes the unusually heavy rains and flooding during the second quarter of 2018, which displaced thousands of people and caused deaths in the Shabelle river valley and in Moga...nu, respectively.

The Independent Expert takes note of measures taken by AMISOM, such as the recruitment of human rights protection officers, who will enhance its compliance with human rights and international humanitarian law obligations. He commends AMISOM for taking further measures to eliminate sexual exploitation and abuse and to minimize civilian casualties during its operations.

The Independent Expert calls for the expeditious conclusion of the constitutional review process. He urges the Federal Government and the Federal Members States to increase their cooperation in order to enhance respect for human rights in Somalia.

The Independent Expert concludes the report by making several recommendations on the identified challenges, including that the international community ens..re that the drawdown of AMISOM troops be based on realistic timelines and criteria and that the Somali National Army is properly trained, funded and equipped to enable it to guarantee national security. He further recommends that the Federal Government accede/ratify several international and regional human rights instruments that it has not yet acceded to.

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I. Introduction

1. The present report of the Independent Expert on the situation of human rights in Somalia, Bahame Tom Nyanduga, covers the period since his previous report to the Human Rights Council at its thirty-sixth session (A/HRC/36/62). It is submitted pursuant to Human Rights Council resolution 36/27, in which the Council requested the Independent Expert to continue to work closely with the Federal Government of Somalia at the national and subnational levels, as well as with all United Nations bodies, including the United Nations Assistance Mission in Somalia, the African Union, the Intergovernmental Authority on Development (IGAD), other relevant international organizations, civil society and all relevant human rights mechanisms, and to assist Somalia in the implementation of, inter alia, its domestic and international human rights obligations and Human Rights Council resolutions and other human rights instruments, including associated routine reporting. The Council also requested the Independent Expert to report to it at its thirty-ninth session and to the General Assembly at its seventy-third session.

A. Political, socioeconomic and human rights landscape

2. As a background to the present report, it is imperative to record the steady progress made by Somalia during the past year, during which it continued to record significant improvements in the political, socioeconomic, humanitarian and human rights landscape, which led to stability throughout the country, with the exception of the reported terror attacks. The participation in 2018 of the Federal Prime Minister, Hassan Ali Khaire, in meetings of the World Economic Forum in Davos, Switzerland, held on 23–26 January 2018, was a highlight of the growing confidence in Somalia of the international community. Somalia continued to consolidate the peace, reconciliation and institution-building processes that had been a key feature since August 2012, when the Transitional Federal Government was established. However, despite the progress made, Somalia continues to face many security, political and economic challenges that have an impact on human rights situation in 2018.

B. National constitutional convention

3. During the reporting period, the Federal Government embarked on the process of adopting a permanent constitution. On 13–15 May 2018, Somalia convened in Mogadishu a national convention on the launch of the constitutional review process and planned to have a new Constitution before the "one-person, one-vote" elections scheduled to be held in 2020. The convention included representatives of the Federal Parliament, the Federal Government, the judiciary, the National Independent Electoral Commission, the Boundaries and Federation Commission, the Federal Member States, the Banadir Regional Administration, youth groups, women, civil society organizations, professional associations, religious scholars, members of the Somali diaspora, people with special needs, traditional elders and members of the international community.

4. The Prime Minister pledged financial and political support to the process and expressed his hope that the country would have a new constitution by the end of 2019. The Federal Government pledged $3 million for the process and urged the participants to produce a Somalia-owned document that would guarantee national unity. The Independent Expert commends the Federal Government for undertaking an inclusive process and ensuring that the review is a Somali-owned process. It is of paramount importance to reach political agreement to define the allocation of powers, economic resources and revenues so that the Federal Member States are not left behind. To that end, the Independent Expert applauds the commitment made by participants at the convention.

C. Economy

5. The economy of Somalia continued to improve and attracted positive assessments from international financial institutions. According to the African Development Bank (AfDB), between 2012 and 2016, Somalia recorded moderate growth, averaging about 3.4 per cent. In 2017, real growth in gross domestic product slowed to an estimated 2.4 per cent, due mainly to the drought, but it is projected to recover to 3.5 per cent in 2018 and 2019. The main drivers in 2017 were construction, telecommunications and financial services. The diaspora played a major role by investing funds from abroad and returning with critical skills. Projected growth in 2018 and 2019 is expected to be driven by the recovery of agriculture and higher private sector investment. Inflation is expected to remain around 2.7 per cent in 2018 and 2019.

6. AfDB noted that key economic achievements included drafting the first National Development Plan for the period 2017–2019, which articulated economic reconstruction and development priorities. Continued political stability and the improved security situation has enabled the country to focus on its implementation. Development programmes are being implemented to revive the social economic sectors, such as the education sector, and initial achievements have included the enrolment of more children in formal primary education.[1]

D. Challenges

7. Despite the progress made, Somalia continues to face security, political and economic challenges that have an impact on the human rights situation in 2018. Terrorism remains the major threat to peace and stability in the country. Al-Shabaab has continued its attacks on the civilian population, public officials and institutions, the Somalia security forces and the AMISOM contingents. On 14 October 2017, Somalia suffered the biggest terrorist bomb attack in Mogadishu, in which an estimated 800 people were killed. The continuing conflict with its high cost on civilian lives and insecurity continues to make headlines.

8. Drought ravaged Somalia for most of 2017. Internally displaced persons in and around Mogadishu were forcefully evicted from their settlements in December 2017. Floods in April and May 2018 affected large parts of the Shabelle river valley and Mogadishu. The number of internally displaced persons increased from 1.1 million to 2.1 million, due to conflict and climatic conditions, which had a negative impact on their right to shelter, a safe and healthy environment and other associated social and economic rights, in particular nutrition and health needs.

II. Mission to Somalia

9. The Independent Expert conducted his fifth mission to Somalia from 25 April to 4 May 2018.[2] Prior to the mission, he had conducted week-long consultations in Geneva and Nairobi and had met with members of the Human Rights Council, the Permanent Representative of the African Union to the United Nations Office and other international organizations in Geneva, representatives of international humanitarian organizations and civil society organizations working in Somalia. He briefed them on the human rights situation and humanitarian issues that would require his follow-up during the mission.

10. He discussed with the President of the Council the problem of lack of capacity in Somalia, the need to support post-conflict States such as Somalia in the implementation of Human Rights Council resolutions, and the need for the Council to consider practical ways on how recommendations addressed to post-conflict States could be implemented.

[1] More than 2,507,430 children aged 6–11 years enrolled for the primary school year from October 2017 to June 2018.

[2] Previous missions took place in December 2014, May 2015, April 2016 and May 2017.

Subsequent to his mission, the Independent Expert briefed representatives of the Development Group for Somalia, in Nairobi, and members of the Friends of Somalia group and the African Group, in Geneva.

11. The objectives of the mission were as follows:

(a) To assess the human rights situation and the capacity of Somalia to meet its human rights obligations and implement the recommendations of the Council and other human rights mechanisms;

(b) To follow up on issues related to sexual and gender-based violence and responses by the justice sector, particularly the role of the traditional justice system (*xeer*), when addressing the rights of women;

(c) To assess the rights of children in Somalia in general, in particular the treatment of children who had been recaptured or who had escaped from Al-Shabaab;

(d) To assess all other aspects of human rights that he had reported on previously.

12. The Independent Expert met with the Federal Minister for Human Rights and Women's Development, the Minister for Constitutional Affairs and the Minister of Justice, as well as the Ministers for Human Rights and Women's Development from Hirshabelle and Galmudug — two Federal Member States that he had not interacted with previously. In Puntland, he met with the Minister of Justice, the Minister for Religious Affairs and Rehabilitation, the Minister for Human Rights and Women's Development, the Acting Chief Justice and the Acting Attorney General.

13. The Independent Expert also held meetings with the leadership of UNSOM and senior officials of AMISOM, as well as representatives of development partners and members of civil society, with whom he discussed the human rights situation — based on the above-mentioned objectives — and the support of the international community to the Joint Programme on Human Rights, which was essential for the enhancement of the capacity of the Federal Government and other stakeholders to protect human rights.

14. During the various meetings, the Independent Expert was briefed on progress made in the political, social, economic and human rights fronts as well as the challenges faced since his previous report.

15. The Independent Expert held discussions with officials of the United Nations Children Fund (UNICEF) and attended a workshop organized in Nairobi for the Federal Government Ministers and officials and civil society organizations, on the rehabilitation and integration of children who had been recaptured from or who had escaped from Al-Shabaab. Regarding the fate of recaptured children, UNICEF emphasized that the best interests of the children must be adhered to during their recapture, screening, rehabilitation and integration back into their communities. UNICEF, the Federal Government and regional States governments, the security forces and civil society working for child rights have all worked closely to screen the recaptured children and determine their age. All parties recognized that the recaptured children should be treated as victims, rather than armed combatants, having been abducted and forcibly recruited, brainwashed and forced to engage in combat against their will.

16. The Independent Expert learned about counter-terrorism measures being conducted through the use of drone attacks as a means of combating Al-Shabaab. He emphasizes the need for all forces involved in the conflict in Somalia to ensure respect for international humanitarian law during military operations and to respect human rights during counter-terrorism measures against Al-Shabaab in order to protect the lives of the civilian population.

III. Capacity of the Government to implement its human rights obligations and cooperation with human rights mechanisms

17. Somalia is a State party to five of the core human rights instruments and the Optional Protocol to the International Covenant on Civil and Political Rights. It has

submitted two reports to the Council for the universal periodic review process, in 2011 and 2016. It acceded in 2015 to the Convention on the Rights of the Child. With the technical support of UNSOM and other United Nations agencies and development partners, the Federal and the regional State Ministries of Human Rights and Women's Development are currently implementing some of the country's human rights obligations. In 2011, Somalia accepted 155 of the recommendations made during the universal periodic review. During the 2016 review, Somalia accepted 168 recommendations out of 228. The recommendations contained in paragraphs 98.144 to 98.155 of the 2011 report of the Working Group on the Universal Periodic Review emphasized the need for Somalia to be given support and technical assistance to enable it to meet its obligations.[3] Yet the Federal Government and regional State Governments continue to suffer from lack of adequate human and material resources, which hamper their ability to meet their human rights obligations. Prior to his mission, the Independent Expert sought information from the Government on the rate and capacity of implementation of all Council resolutions accepted by Somalia, but was unable to obtain such information due to lack of capacity.

18. In discussing the capacity issue, the Federal Minister for Human Rights and Women's Development noted that little had changed since 2017.[4] Lack of office space and the need to train staff are some of the urgent capacity constraints the Ministry faces. The Ministry currently has 102 staff, assisted by two consultants, accommodated in five rooms in a building that the Ministry does not own. Of those consultants, one is supported by UNSOM and the other was hired to advise on gender and human rights issues and is helping to draft a report to the Committee on the Rights of the Child. The Independent Expert has raised this issue in previous reports.

19. The Minister for Human Rights and Women's Development for Galmudug informed the Independent Expert that her state had been neglected by both the Federal Government and United Nations agencies. As a newly established regional state, Galmudug lacks basic services. The Ministry has only five staff, and its capacity is very limited at all levels. The challenges Galmudug faces include high illiteracy rates and a lack of basic social services, such as health centres. The Minister complained that the resources invested by the international community into the Federal Government were not distributed equally among the Federal Member States. She stressed that Galmudug needed assistance, as it relied heavily on livestock, which had been badly affected by the drought. Galmudug called for adequate resources to be allocated to its government. It prided itself on being one of the safest states in Somalia, and it was time that businesses invested in the newly established regional States as they were doing in Mogadishu, Garowe and Hargeisa.

20. The Minister for Human Rights and Women's Development for Hirshabelle underscored the problem of inter-clan conflict, in particular with respect to land and water. This created food insecurity. She noted that the minority clans suffered the most as their lands were often grabbed by powerful clans, and livestock destroyed their crops before they were harvested. The Government collected money from the powerful clans, which compounded the victims' suffering and left them with no remedy. She stressed that minority clans had no access to justice as they could not afford the legal fees, thereby forcing them to go to traditional leaders for solutions. Legal aid did not exist. The Minister recommended that legal assistance be reintroduced to help victims.

A. Establishment of the National Human Rights Commission

21. During the period under review, the Federal Government established the National Human Rights Commission, which had been a long-standing recommendation of the Council. A section of civil society had complained that the process lacked transparency and credibility and it would perpetuate the clan-based structures. Upon inquiry from the authorities, the Independent Expert was informed that the process was supervised by external consultants, which guaranteed fairness, transparency and inclusivity. According to

[3] See A/HRC/18/6.

[4] See A/HRC/36/62, paras. 29–30.

the law, a minimum of three out of the total nine members of the Commission should be women. All applicants were subjected to a written test. The panel prioritized merit, without which inclusiveness would have been jeopardized.

22. The panel reviewed 615 applications. Eventually, 45 candidates (17 women and 28 men) were shortlisted and sat an interview on 18 December 2017. Nine prospective members of the Commission were selected, including four women and one person with a disability. At the time of preparing the report, the Cabinet had yet to finalize the procedures for making the Commission operational. The Independent Expert urges the Cabinet to finalize the establishment of the Commission and other constitutional commissions, such as the judicial service commission and the constitutional review commission, to enhance the State's capacity to ensure respect for human rights.

B. Somalia Joint Human Rights Programme

23. In February 2018 the Federal Government, UNSOM, the United Nations Development Programme (UNDP) and UNICEF launched the Joint Human Rights Programme to support the work performed by the Federal Government. The Programme aims to strengthen the nexus between human rights, children's rights and women's rights on the one hand and security and justice institutions on the other hand, through the implementation of the National Development Plan priorities, the commitments of Somalia under the universal periodic review and human rights road map.

24. The Programme, structured around two thematic areas, i.e. institutional development and social engagement and accountability, aims at empowering civil society to hold government institutions accountable. It should be noted that the five outcomes linked to the two thematic areas range from strengthening the capacity of ministries at the federal and state levels to support civil society organizations, to empowering rights holders — namely, the representatives of Somali women, men and children and persons with disabilities — to claim their rights.

25. The implementation of the Programme requires $5,523,809 of funding. So far, only $500,000 has been disbursed, by Sweden. Through the Joint Programme, the international community can offer practical ways to help Somalia build its technical capacity. The Federal Government itself is considering putting money into the joint programme, despite its limited resources. Such a contribution would demonstrate its ownership of the Programme.

26. Implementation of the Programme will contribute, inter alia, to the achievement of Goal 16 of the Sustainable Development Goals, on peace, justice and strengthening institutions, and will deliver on the National Development Plan for the period 2017–2019. It will also enhance the implementation of the rule of law, justice sector reforms and the existing Joint Programme on Women's Political Empowerment and Leadership.

C. Strengthening institutions for justice and the rule of law

27. In his previous report to the Council,[5] the Independent Expert noted that little had been achieved with regard to strengthening justice and rule-of-law institutions, and that capacity-building for justice and rule-of-law professionals was urgently needed.

28. The Joint Human Rights Programme is designed to address that situation, as it addresses the issue of strengthening institutions, accountability and respect for human rights. UNDP continues to roll out its mobile court programme, as security issues have prevented the construction of permanent infrastructure in some parts of the country. The Human Rights and Protection Group of UNSOM also conducts capacity-building training for various rule-of-law personnel.

[5] Ibid., paras. 40–43.

D. Fight against Al-Shabaab, and security situation

29. The Somalia national forces, with the support of AMISOM troops, have ensured the improvement of the security situation in Somalia, thus strengthening democratic institutions, improving stability and delivery of services by the Government to the Somali people. In that connection, in April 2018, following week-long deliberations, senior commanders of AMISOM[6] concluded on their transition plan in Somalia. The commanders evaluated the status of the implementation of the plan, which included launching operations to flush out Al-Shabaab remnants and building the capacity of the Somali security forces, as stipulated in the country's National Security Architecture, as agreed by political leaders in April 2017. In December 2017, participants in a security conference in Mogadishu reiterated the need to ensure that the drawdown of African Union forces is based on realistic and not artificial timelines.

30. The Special Representative of the Chairperson of the African Union Commission for Somalia stated that the Somali National Security Forces needed to be supported with the required equipment and weapons and the required mobility to be able to perform their duties. In that connection, the Independent Expert welcomes the launch by the European Union of a 10.5 billion euro ($12.4 billion) "peace facility", which will be operational in 2021 to pay for military equipment, including lethal weaponry, for partner countries in crisis zones such as Somalia. The fund, when operational, will greatly enhance the capacity of Somalia national forces to fight Al-Shabaab and protect the country after the withdrawal of AMISOM forces.

E. Freedom of expression

31. The Independent Expert notes a slight improvement in the situation of the right to freedom of expression and opinion compared with the previous year, but continues to receive reports of alleged cases of arbitrary arrest, detention without trial, harassment and acts of intimidation of journalists committed by security forces and agencies at the Federal and Federal Member State levels. The reports indicate that arrests and intimidation were common in Berbera, Hargeisa, Garowe, Kismayu, Mogadishu, Galkayo, Bossasso, Baidoa, Beledweyne, Las Anod and Jowhar. During the reporting period, 4 journalists were killed and 12 wounded, particularly in the last four months of 2017. In addition, 22 journalists were arrested and 8 assaulted. Some allegedly received death threats or were imprisoned without due process but later released without any charges.

32. Three of the four journalists who were killed died on 14 October 2017, after the deadliest bomb blast to hit Mogadishu. In addition, two news media organizations were shut down in 2017 and six news websites were blocked in Somaliland on court orders, for publishing articles that had been deemed critical to authorities, or for reporting on the conflict between Puntland and Somaliland, which was considered a state security issue, thus constraining both traditional media and online platforms. Journalists have been arrested for publishing what is perceived as "fake news". Attacks on journalists, intimidation, harassment and death threats is pervasive and continues with impunity.

33. In the area of policy formulation and legislation, the proposed amendments to the Media Law that is currently before the Federal Parliament do not contain recommendations made by media practitioners. This might yet produce a law that does not meet international standards. At the Federal Member State level in Puntland, Parliament approved the amendments to the Media Law on 6 December 2017, while Jubbaland authorities initiated consultations on a media bill in November 2017.

[6] www.amisom-au.org.

F. Follow-up on the right to freedom of association

34. The Independent Expert followed up on a matter previously reported relating to the existence of two factions within the National Union of Somali Journalists.[7] He enquired from Federal Ministers and the Union factions about the status of implementation of the recommendations of the International Labour Organization (ILO) in which it, inter alia, called upon the Government to desist from interfering in the affairs of the Union and to guarantee the right to freedom of expression, to protect journalists from harassment, arrests, intimidation, threats and attacks and to investigate the assassination of journalists and threats thereof. The fact that there are two individuals who claim to lead the Union indicates that the matter has not yet been resolved. The Federal Government is equally divided on the issue. What started as dispute in the leadership in the Union has metamorphosed into a trade union issue attracting international attention at ILO, with the European Parliament and a number of European jurisdictions issuing orders and declarations against one of the leaders/factions in the Union.

35. The Independent Expert has sought to mediate the issue, primarily as a matter concerning the leadership of the National Union of Somali Journalists, but also to ensure that ILO[8] recommendations are implemented. In his view, the core of the problem is which of the two persons was elected legally as Secretary-General of the Union. When the Independent Expert met with the two sides, he sought clarifications on:

(a) Whether their respective elections as Secretary-General had been conducted in accordance with the Supreme Court ruling of 4 February 2016;

(b) Whether the elections had been consistent with the constitution of the Union.

36. The session did not bear any positive results but only managed to highlight the divergent views and claims for legitimacy by both sides.

37. The Independent Expert concluded that there were indeed two factions of the National Union of Somali Journalists operating side by side, with each one answering to a different constituency. Each of them has addressed communications to him at different times.

38. The Independent Expert holds the view that a lasting solution to the existence of two Secretaries-General of the National Union of Somali Journalists would be the proper implementation of the 4 February 2016 Supreme Court decision. There are three important observations he wishes to make: (a) the Supreme Court discussed the two general meetings held by the different "factions" — on 14–15 March 2011 and on 28–29 March 2011 — and declared the latter illegitimate and the former legitimate, including the election of Omar Farouk Osman; (b) the Court nonetheless directed that, as the three-year term allowed by the constitution of the Union had expired, fresh elections should take place within five months, overseen by the head of the regional appeals court, to validate the legitimacy of the participants at the general meeting and the results; and (c) it later transpired that the general meeting of the Union that had been organized by Mr. Osman on 13 February 2016 had been disrupted by National Intelligence and Security Services agents, notwithstanding that it had been sanctioned by the Banadir Regional Court. Yet the Government reported to ILO that a new Union leadership had been elected at a general meeting on 17 May 2016.[9]

39. ILO is on record as stating that the Government had interfered in the affairs of the National Union of Somali Journalists. It recalled the right of workers' organizations to elect their representatives freely as an indispensable condition to protect their interests. It stated that it is essential that public authorities desist from interference, so that workers enjoy this right. ILO urged the Government to abide by the Supreme Court decision and to refrain from interfering with the internal affairs of the Union and the Federation of Somali Trade

[7] See A/HRC/36/62, paras. 36–38.

[8] See 380th report of the Committee on Freedom of Association, available at www.ilo.org/gb/GBSessions/GB328/ins/WCMS_534575/lang--en/index.htm; and 383rd report, available at www.ilo.org/gb/GBSessions/GB331/ins/WCMS_592687/lang--en/index.htm.

[9] See 380th report, paras. 914, 924, 926 and 935 (a).

Unions and ensure that the elected leaders exercise their mandate freely, until otherwise determined by the members themselves.

40. The question that remains is whether the order of the Supreme Court, that a general meeting take place and be supervised by the head of the regional appeals court, has been satisfied. ILO made a specific recommendation concerning the need to abide by the Supreme Court decision. The Independent Expert holds the same view, that the Government abide by the Supreme Court decision and the ILO recommendations. However, he has found in neither the ILO ruling nor any other source any record of a general meeting at which Mr. Osman was elected, subsequent to the general meeting of 13 February 2016, which was disrupted. That disruption constituted government interference, hence the rebuke by ILO. Since no proper election has taken place subsequently, it is correct to state that there have been no elections as directed by the Supreme Court. Mr. Osman's position emanates from the elections of 14–15 March 2011, prior to the Supreme Court decision. It is for that reason that the Independent Expert is of the view that, in order to resolve the problem of the existence of two factions, new elections supervised by the Court should be held without government interference. That part of the Supreme Court directive remains unimplemented.

G. Rights of persons with disabilities

41. During his meeting with civil society organizations, one of the key issues that emerged was the absence of a legal framework for the protection of the rights of persons with disabilities, who in Somalia suffer multiple cases of discrimination and marginalization, such as access to employment opportunities. Somalia has not yet acceded to the Convention on the Rights of Persons with Disabilities, nor has it adopted legislation to provide for the rights and protection of such persons. The issue was brought to the attention of the Federal Minister for Human Rights, who stated that the Government was in the process of drafting such legislation and would in due course ratify the Convention.

IV. Humanitarian situation: internal displacement, drought and the impact of floods and humanitarian responses

42. During his mission, the Independent Expert followed up on the dire humanitarian situation affecting the civilian population — and internally displaced persons in particular — caused by conflict, drought and floods due to excessive rains. The human rights of the displaced remains very precarious, hence the need for durable and lasting solutions.

43. According to the Office for the Coordination of Humanitarian Affairs,[10] as many as 6.7 million people — more than half the population — were affected by the drought. About 926,000 people seeking relief from drought-hit areas were displaced between November 2016 and September 2017. Consequently, the number of internally displaced persons reported doubled in 2017 from 1.1 million to an estimated 2.1 million. The preparedness of the international community enabled a humanitarian response that averted famine and a massive death toll through innovative measures, such as the use of electronic money transfers and a voucher system instead of goods delivery, which enabled the affected population to receive timely assistance. The measures boosted the local economy, cut out gatekeepers and eliminated corruption. Unless long-term measures are taken, famine remains a looming risk in the coming years. The Independent Expert commends the international humanitarian community for their life-saving efforts during the 2017 drought. In that regard, the 2018 Humanitarian Response Plan highlights the need to sustain humanitarian life-saving efforts at levels similar to 2017.

[10] See OCHA and Humanitarian Country Team, Humanitarian Response Plan: January–December 2018 (2017). Available at www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/20180206_somalia_humanitarian_response_plan.pdf.

44. The Federal Government of Somalia requested the establishment of a Drought Impact and Needs Assessment and subsequent Resilience and Recovery Framework in August 2017 to identify the root causes of recurrent drought and to develop a strategy for medium-term recovery and long-term resilience. The Assessment and Framework align with the Humanitarian Response Plan, the National Development Plan and the National Disaster Management Policy and are supported by the World Bank, the United Nations and the European Union.

45. It is of paramount importance that the Drought Impact and Needs Assessment and the Resilience and Recovery Framework be funded in a timely manner. In order to create impetus for partner funding, the Federal Government of Somalia and Federal Member States should primarily inject local resources in the furtherance of the ownership they have demonstrated in developing the plan.

46. According to the UNHCR-led Protection and Return Monitoring Network,[11] having averted a famine and deaths during the drought period, Somalia suffered heavy rains, floods and a cyclone/storm that resulted in deaths and affected livelihoods, livestock, shelter and key infrastructure across Somalia. Within a few weeks, Somalia experienced the heaviest rainfall in more than three decades. At the onset of the flooding in early May 2018, the Federal President accompanied by representatives of the international community visited the flooded areas in Beletweyne to assess damage and offer moral and material support.

47. An estimated 794.761 people were affected by the flooding in southern and central States, and more than 231,335 people were temporarily displaced. In total, 21 people were reported dead, including 9 in Hirshabelle State, 4 in Jubbaland State and 8 in the Banadir region. In Galmudug State, more than 7,200 people were affected and an estimated 5,248 temporarily displaced. The floods increased the high risk of an outbreak in several areas of waterborne communicable diseases, such as malaria and acute watery diarrhoea/cholera.

48. The 2018 Humanitarian Response Plan, valued at an estimated $1.5 billion, has only been 25 per cent funded. In addition, logistical challenges have continued to hamper humanitarian access and response in many areas. In that regard, on 20 May 2018 the Federal Government of Somalia and the United Nations launched an appeal for $80 million. The appeal aimed to provide the affected population with immediate assistance and avert a larger-scale humanitarian crisis, while seeking to capitalize on the agricultural potential the rains presented in order to address the food insecurity exacerbated by protracted drought.

49. The population of internally displaced persons in Somalia had doubled since the previous report mainly due to climatic conditions, but also to the continuing conflict, making Somalia one of the world's largest displacement crises.[12] In total, 108,500 Somali refugees have returned from the Yemeni conflict to Somalia since December 2017. In the absence of formal settlements, internally displaced persons and refugee returnees tend to join existing, congested settlements or establish temporary sites in urban and peri-urban areas, leading to half of all internally displaced Somalis to be located in and around Mogadishu and Baidoa.

50. In December 2017, informal settlements for internally displaced persons around Mogadishu, which had had infrastructure and access to considerable international humanitarian support, were demolished without due process. Before December 2017, mass evictions had occurred in March 2015, whereby 3,500 households — involving 123,421 individuals — had been evicted from the KM11 area of Mogadishu. In total, 143,510 individuals had been evicted in 2016 and 153,682 individuals in 2017. Forced evictions multiply the protection and displacement crises affecting Somalia. The displaced are unable to have access to or assert their basic rights, mainly due to a power imbalance between them and the evicting parties. The displaced have settled on private and government land, for which they do not have lasting tenure or security guarantees. In Mogadishu, the growing demand for private and public land since the withdrawal of Al-Shabaab has increased

[11] https://reliefweb.int/report/somalia/ocha-somalia-flash-update-6-humanitarian-impact-heavy-rains-25-may-2018.

[12] https://www.uninsomalia.org/durable-solutions-initiative.

difficulties for internally displaced and urban poor populations to find land where there is no risk of eviction.

51. In 2016 the Federal Government, in collaboration with the United Nations, the World Bank, non-governmental organization (NGOs) and the donor community, developed the Durable Solutions Initiative, an integrated and comprehensive approach for the reintegration of internally displaced persons, in line with the National Development Plan, as a collective framework to identify the causes of displacement and its protracted characteristics, and harmonize comprehensive and inclusive durable solutions, approaches and programming. It promotes a rights- and needs-based approach and simultaneously involves humanitarian, development, peace and State-building partners under the leadership of government authorities and respectful of international standards. The approach is a home-grown policy initiative that aims to address endemic displacement in Somalia. Based on the above principles and in spite of the ongoing fragile humanitarian situation, which has slowed down progress on the Approach, substantial achievements have been made in several areas, including: (a) policy dialogue and development; (b) joint planning and programming; (c) coordination; and (d) creating a base of evidence.

52. An underdeveloped regulatory framework, a weak protective environment and a lack of awareness of their rights have hampered access to justice for internally displaced persons. On 23 October 2009, Somalia signed but has not yet ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), which defines the rights of the displaced and the primary responsibility of national authorities in protecting those rights and ensuring the response to displacement.

53. The Independent Expert urges the Federal Government to adhere to the National Development Plan and the Integrated and Comprehensive Approach principle, in order to safeguard the basic rights of internally displaced persons and to desist from their arbitrary forced evictions. He also urges the Government to guarantee the legal protection for victims of forced eviction, by ensuring their right to due process, remedies and the allocation of alternative land for their settlement.

V. Rights of children in Somalia

54. One of the objectives of the Independent Expert's mission to Somalia was to assess the human rights situation of children in general and in particular the fate of children recaptured from Al-Shabaab. Apart from the abduction of children, the main root causes for the recruitment by Al-Shabaab of young people include socioeconomic and political exclusion, poverty, unemployment and radicalization, or the indoctrination with a violent extremist ideology. A substantial number of children have been abducted by Al-Shabaab from schools and villages to join their ranks. Some children have been known to travel unaccompanied and through hazardous routes to towns deemed safe in order to escape from Al-Shabaab, and have been cared for by civil society organizations. According to the statistics provided by UNSOM, Somalia has one of the youngest populations in the world. It is estimated that 75 per cent of its population is under 30 years old. There has not been an official census in Somalia since before the collapse of the Siad Barre regime.

55. The participation of young persons in decision-making is almost non-existent due to discrimination based on clan and cultural affiliations, age, education and poverty. Young women suffer in particular. Illiteracy is high, with around 55 per cent of young people unable to read or write. The figures reflect harsh realities and can explain why some young people join Al-Shabaab or other armed groups voluntarily.

56. Some of the young people who had been abducted by Al-Shabaab before being recaptured or escaping are undergoing rehabilitation programmes. The Independent Expert visited two rehabilitation camps for recaptured children, one in Mogadishu and another in Puntland. The Independent Expert witnessed the vocational training and psychosocial counselling that the children receive, the majority of whom appeared to be below the age of majority. They are taught skills ranging from mobile telephone repair to courses on electrical engineering, plumbing and motor mechanics. In Puntland, he learned that the children had been serving jail sentences of between 10 and 20 years imposed by the

military court for fighting with Al-Shabaab. UNICEF and civil society organizations were negotiating with Puntland authorities to have those sentences commuted, since the children had been forcibly recruited and were therefore victims and should not be subjected to double jeopardy. In addition, UNICEF was providing training to Somali authorities on the prevention of child recruitment, and their release and reintegration.

57. The Independent Expert commends UNICEF and civil society organizations for their most valuable protection and support to these children. He also expresses his appreciation to the Federal and Puntland governments, UNSOM, UNICEF and the centres for arranging the visits. He urges the international community to provide financial and material support to these centres and urges the Government to fund centres to rehabilitate and reintegrate the recaptured children into their communities.

VI. Women's rights, the role of traditional justice mechanisms (*xeer*) and the administration of justice

58. Women's rights in Somalia continue to suffer due to a lack of an adequate legal framework and the absence of strong law and order and justice institutions. Conflict-related factors, such as displacement, rapes committed by youth gangs and unidentified men in uniform, traditional practices such as forced marriages of young girls and female genital mutilation, have compounded the violations of women's rights in Somalia. During his mission, the Independent Expert continued his advocacy for enhanced physical protection of victims of sexual and gender-based violence and the need to adopt legislation against sexual offences and the provision of medical and psychosocial services to victims of such violence.

59. He also discussed the role of traditional justice mechanisms (*xeer*) in the protection of women against sexual and gender-based violence. The Independent Expert expressed his concern and regret at information indicating that sexual violence attacks against women remained pervasive and were carried out with impunity, citing the attack in October 2017 against a young girl by a member of the Puntland security forces who, according to reports, had been neither arrested nor prosecuted. The girl had been sent for treatment outside the country through a private benefactor.

60. In the newly formed Regional States, the vulnerability of women and girls has been exacerbated by the food crisis. There is a severe lack of capacity, which makes it difficult to provide protection to women. In Hirshabelle, women face many challenges. Some have been attacked and raped when going to or coming from the market. Sometimes women have been raped then killed. Some women who have become pregnant after being raped have been forced to leave their villages, and their babies are at risk of being killed. The women sometimes commit suicide if they cannot leave their village to give birth somewhere else. There are no centres that provide psychosocial counselling or support to these victims. Despite advocacy efforts, it is reported that female genital mutilation still occurs, because the women cutters have no alternative livelihoods.

61. In Galmudug, the child and maternal mortality rate is very high due to the lack of midwives and health centres. Women are unable to have access to antenatal or postnatal care and many die while giving birth. There are no orphanages to receive abandoned children. The illiteracy rate is also very high. The Independent Expert was informed of a rape case that took place in April 2018 following a clan conflict in which a clan member raped and attacked a 13-year-old girl with a knife, causing grievous bodily injuries. The Galmudug government has not prosecuted the alleged perpetrator due to lack of capacity and resources.

62. On 30 May 2018, the Federal Council of Ministers adopted the sexual offences bill. The draft bill is the fruit of cooperation between the Federal Government and international and local technical experts, including judges, police officers, prosecutors and investigators, civil society and the religious establishment. The bill comes in the wake of similar

legislation adopted in Puntland in 2016.[13] Unlike the 1962 Penal Code, it is tailor-made to address sexual offences in Somalia. Once adopted, the bill could serve as a template for other conflict-affected countries throughout the world.[14] The Independent Expert commends the Federal Government for taking this very bold and important step. He also commends Legal AID Worldwide, an international NGO, which contributed greatly to the drafting of and advocacy for the bill.

63. The bill, once adopted into law, will provide a legal framework that is essential for the protection of rights of women in Somalia. Its effective implementation will enhance greatly the realization of their rights. Yet laws alone will not restore the rights of women if the governments and society at large do not embrace these legal changes, as Puntland did in December 2016, when a gang rape case was resolved outside the framework of the sexual offences act.

64. It is in this context that the Independent Expert seeks to convene a national conference which will, inter alia, promote and disseminate these legal instruments to the traditional elders, religious leaders and local communities and will also address the role of traditional justice system (*xeer*) in the protection of the rights of women in Somalia.

VII. Puntland

65. The Independent Expert visited Puntland to assess the human rights situation since his previous visit. Puntland has continued to enjoy relative peace compared with the rest of South Central Somalia, in spite of an active conflict in recent months between Puntland and Somaliland forces over the long-standing territorial dispute in the Sanaag and Sool regions. A truce with Galmudug, a fellow Federal Member State with which it has a border dispute, is holding. As long as these conflicts remain unresolved, they not only affect the basic human rights of the residents of the regions, but also destabilize the peace and reconciliation process in Somalia. Puntland is also ensuring that Al-Shabaab, in the Galgala Mountains, does not increase its presence and attacks.

66. The Independent Expert learned about the Alternative Dispute Resolution Centres initiative, launched by the Puntland government with support of the European Union. The initiative has been implemented in collaboration with the International Development Law Organization, an international NGO that conducts capacity-building and training in Somalia. The initiative is a model integration of the formal and traditional judicial mechanisms (*xeer*), whereby civil disputes are resolved by traditional elders, while proceedings are recorded and decisions executed through the formal system. To strengthen access to justice and justice delivery, Puntland regularly sends magistrates to remote villages to adjudicate cases. Long distances that have to be covered remain a challenge.

67. As regards the gang rape case, the authorities stated that cooperation between the formal justice system, sharia scholars and traditional elders had ensured that justice for the victim was achieved. All of the young people involved were serving prison sentences and had paid compensation to the victim. The Independent Expert learned about the existence of a forensic lab that will enhance the investigation of cases of sexual and gender-based violence and enhance the delivery of justice to such victims in Puntland. It had been built through Swedish donor support and was the first of its kind in Somalia.

68. On the negative side, the Independent Expert learned about a practice whereby parents petitioned courts to discipline young people engaged in anti-social behaviour or substance abuse by sending them to jail. The practice had also affected young people from the diaspora, who had allegedly been sent back to Puntland to face this form of punishment. The practice violates the rights of young persons to the presumption of innocence, since they are not charged or convicted for any criminal offences.

[13] See A/HRC/36/62, para. 70.

[14] Discussions are currently under way between Legal AID Worldwide and the Minister for Gender, Family Affairs and Human Rights in Jubbaland about drafting a similar sexual offences bill for Jubbaland.

69. During his meetings with the Acting Attorney General, the Chief Justice and the Minister for Justice, it emerged that the practice was known within the Government. It had been reported that prisons were congested because of the illegal incarceration of these young people, although this was denied. The Independent Expert urges Puntland to address the social delinquency problems through social rehabilitation programme rather than through penal sanction.

70. In spite of these challenges, Puntland continues to record economic growth through the construction of vital infrastructure, such as a new airport and solar power generation farms, and has continued to host internally displaced persons, who enjoy vital services, including solar powered lighting in their settlements in the town of Garowe, on an equal basis to the other residents.

VIII. Somaliland

71. The Independent Expert could not visit Somaliland during the mission. However, through credible remote monitoring, he was able to record some positive as well as some negative developments that affected human rights. Somaliland had held presidential elections on 16 November 2017, and a new President, Muse Bihi Abdi, had been elected after 17 years of rule by President Ahmed Mohammed Mohamoud, known as "Silanyo". While the elections were deemed free and fair, it is noted also that prior to the election there had been a lot of harassment and intimidation, and Kalsan Television had been closed arbitrarily by a minister for reporting on a presidential candidate's rally. Intimidation of journalists had continued in the post-election period. In May 2018, two television stations were banned and journalists arrested for allegedly reporting destabilizing news. Journalists were intimidated and imprisoned for conducting investigations into corruption or topics deemed sensitive, such as the investment agreements regarding the Berbera Port.

72. Somaliland continues to punish persons who espouse national unification. A female poet who had composed a poem glorifying national unity was imprisoned for three years on 15 April 2018 but subsequently pardoned by the new President. A traditional ruler who had been imprisoned was also recently pardoned. The Independent Expert urges the Somaliland authorities to adhere to the human rights obligations that have been assumed by the Federal Republic of Somalia.

73. On 6 January 2018, the Lower House of Parliament passed the rape bill. The House of Elders, otherwise known as the *Guurti*, revised the bill on 12 April 2018, reducing the legal definition of a child from someone aged 18 years and under to 15 years and under, and removing the exemption of fathers and grandfathers from punishment if they are involved in cases of forced marriage. These changes negated the protection that the rape bill had introduced. The law, however, criminalized rape in Somaliland for the first time.

74. The Independent Expert urges the Federal and Somaliland authorities to find wisdom and engage in talks and negotiations to resolve their long-standing differences for the sake of peace and development in Somalia. The recent differences emanating from the proposed concession offered to the port operator DP World to invest in Berbera Port should be resolved for the good of the broader Somali people.

75. Similarly, the Independent Expert urges Puntland and Somaliland to resolve their territorial dispute over Sool and Sanaag for the long-term peace and development of the Somali people at large.

IX. African Union Mission in Somalia

76. During his mission to Somalia, the Independent Expert met with officials from AMISOM to follow up on a range of issues, including the action taken by AMISOM to strengthen its international humanitarian law and human rights compliance and accountability mechanisms. He also wanted to know about the gradual withdrawal of AMISOM troops. All of these issues have broader human rights implications in the short, medium and long terms.

77. The Independent Expert commended AMISOM for its sacrifices and achievements and paid tribute and gave his condolences to the troop-contributing countries whose soldiers had died following the detonation of improvised explosive devices by Al-Shabaab, or during active combat. He urged AMISOM to ensure that its forces complied with their international humanitarian law and human rights obligations during operations and to protect the civilian population.

78. AMISOM stated that it had adopted standard operating procedures and guidelines, including: the indirect fire policy; the 2012 rules of engagement; directive for commanders about their responsibilities during operations; the policy on the treatment of disengaged combatants; and procedures for the handling of persons detained by AMISOM. It also stated that it had conducted human rights training for its troops prior to deployment. As part of preparing the Somali security forces to take over security responsibility, it had trained officers of the Somalia National Army, the National Intelligence and Security Services and officials from ministries on the protection of children and women, who then used their skills to train other Somalis. In that regard, AMISOM underscored that it had recorded some considerable achievement.

79. AMISOM stated that it had recruited human rights officers to support the leadership and to assist the Boards of Inquiries during their investigations into alleged violations by its troops. AMISOM reported that the measures it had taken had substantially reduced cases of sexual exploitation and abuse.[15] However, it identified challenges that hampered the implementation of the recommendations of the Boards of Inquiries when culpability was established. There was a lack of funding for ex gratia payments to victims of its operations, which may lead to reputational damage for AMISOM. The Independent Expert urges the international community and other bilateral partners to continue to provide financial resources to AMISOM to enable it to compensate victims in cases of civilian casualties.

80. Another key challenge facing AMISOM is the discontinuation of United Nations support for its pre-deployment training, which affects some troop-contributing countries more than others. The Independent Expert urges the United Nations to renew support for pre-deployment training for countries that are in dire need of such support.

81. Regarding the implementation of the Security Pact reached under the outcome of the May 2017 London Conference on Somalia and Security Council resolutions, the Independent Expert took note of the first withdrawal in 2017 of 1,000 AMISOM troops. He also took note of the Federal Government transitional plan adopted on 22 March 2018, following the 4 December 2017 security conference. The Government and the international community had agreed on a transition plan that would enable Somalia to assume full responsibility for its security, based on realistic conditions and timelines. The Independent Expert took further note of Security Council resolution 2415 (2018) of 15 May 2018, in which the Council recalled its decision to authorize the African Union to reduce AMISOM uniformed personnel to 20,626 by 30 October 2018.

82. In March 2018, the Heads of State and Ministers from the troop-contributing countries warned that an unrealistic drawdown would lead to a reversal of the gains made by AMISOM. While taking note of the concerns of troop-contributing countries, the Independent Expert urges the international community to ensure that the Somalia transitional plan is supported and fully implemented. The Federal Government of Somalia and its forces have the primary responsibility to guarantee the security of the States, its institutions and its people, a responsibility which cannot be delegated. Without security, the elections expected to be held in 2020 or 2021 could be jeopardized.

X. Inter-clan conflicts and the culture of arms

83. The Independent Expert strongly emphasizes the importance of strengthening the institutions of law and order and justice in Somalia, so that the Somali people can abandon the gun culture and inter- and intra-clan violence that is rampant and responsible for many

[15] See A/HRC/36/62, para. 79.

civilian deaths. Due to the absence of strong justice institutions, clans tend to resolve their disputes through violent means. The current efforts by UNDP to establish mobile courts is a beginning, but the pace of building police stations, correctional facilities and courts across the country remains slow. The Mogadishu Court Complex model should be replicated in other places.[16] Without such infrastructure, the majority of Somali people will continue to resolve their disputes through the traditional mechanisms, or worse still through violence, or will be forced to submit to Al-Shabaab's draconian justice in the area it controls, if the group is not defeated. Hence the need to finance the justice sector reforms and institution-building in tandem with the security sector reforms.

XI. Conclusions

84. The Independent Expert expresses his appreciation to the Federal Government of Somalia and the authorities in Puntland for their cooperation during his fifth mission. He commends the Federal Government and the people of Somalia for the progress they have made since his fourth visit to Somalia, in May 2017. Notwithstanding the continuing threat from Al-Shabaab, the improvement in governance and the peacebuilding process is indicative that the human rights situation in Somalia is on the right track for recovery. The Independent Expert once again acknowledges the economic transformation that is evident in Somalia.

85. At the institutional level, the Independent Expert commends the constitutional review process. The establishment of the National Human Rights Commission demonstrates the confidence in the ongoing peace and reconciliation process and the need for accountability. He commends the Federal Government for implementing a long-standing Human Rights Council recommendation. Once it is fully operational, the Commission will play a vital role in the promotion and protection on human rights in Somalia.

86. The Joint Human Rights Programme and the adoption of the Durable Solutions Initiative for internally displaced persons deserve the support of the international community for their timely implementation.

87. The rehabilitation of young people who are recaptured from Al-Shabaab is critical for the protection of children's rights. Financial support to those civil society organizations that care for children and conduct rehabilitation programmes must be enhanced.

88. The Independent Expert commends the Federal Government for its commitment to assuming its rightful and primary responsibility for its security, and also commends AMISOM for its continued commitment to bringing peace and reconciliation in Somalia, fighting side by side with Somalia national forces. He urges the international community to continue its support for the transitional plan and to provide resources to give full effect to the plan.

89. The conflicts between Somaliland and Puntland and between Puntland and Galmudug are worrisome and threaten national cohesion, peace, reconciliation and development. Unnecessary resources are lost in armed conflict between the same people. A long-lasting solution must be found in order to bring a lasting peace to Somalia.

90. The international community must continue its support to Somalia to enable it to address the human rights, security and development challenges like any other developing State. The Independent Expert calls for appropriate funding of the civilian institutions of governance, such as the courts, ministries and regional States, in order to enhance their capacity to fulfil their respective mandates and governance obligations. He therefore calls on all bilateral and multilateral partners to continue their support for Somalia.

[16] See A/HRC/36/62, para. 41.

XII. Recommendations

91. In view of the foregoing, the Independent Expert makes the following recommendations to the Federal Government:

(a) Ensure the implementation of outstanding recommendations of the Human Rights Council and any other United Nations mechanisms, including ILO recommendations;

(b) Finalize the operationalization of the National Human Rights Commission and provide it with adequate resources;

(c) Ensure that local resources are deployed for the implementation of the Joint Human Rights Programme, to demonstrate ownership and attract funding from partners;

(d) Establish conditions to resolve long-standing disputes at the Federal and State levels concerning territorial and boundary claims between different components of Somalia;

(e) Take concrete measures to amend the Media Law or adopt a new Media Law and take into consideration stakeholders' input when amending or adopting the new Law; and guarantee the rights of journalists and the freedom of the media;

(f) Desist from the harassment, intimidation or arbitrary arrest of journalists, and ensure their protection against attack or assassination;

(g) Accelerate the finalization process for Parliament to adopt the sexual offences bill and ensure its assent expeditiously;

(h) Mobilize local and external resources, including from the private sector, for the sustainable implementation of the Durable Solutions Initiative for internally displaced persons, the Somalia Drought Impact and Needs Assessment, and the Resilience and Recovery Framework;

(i) Establish lasting solutions for victims of floods, including relocation to higher grounds;

(j) Ensure the legal protection of victims of forced eviction, including legal redress and remedies, and abide by the principles through which the Durable Solutions Initiative operates, in particular the integrated approach principle;

(k) Review urgently laws regulating land ownership and property rights, in order to safeguard the rights of internally displaced persons against forced evictions;

(l) Finalize and submit its report to the Committee of the Rights of the Child;

(m) Enhance the protection of children against abduction by Al-Shabaab and establish rehabilitation centres for children recaptured from Al-Shabaab, and increase support to the centres operated by civil society organizations;

(n) Accede to the United Nations Convention on the Rights of Persons with Disabilities and adopt legislation on the protection of persons with disabilities in Somalia;

(o) Accede to the Convention on the Elimination of All Forms of Discrimination Against Women;

(p) Accede to the Protocol to the International Covenant on Civil and Political Rights, which prohibits the involvement of children in armed conflict;

(q) Ratify the Kampala Convention;

(r) Accede to the Rome Statute of the International Criminal Court and other core human rights instruments to which it has yet to accede.

92. **The Independent Expert also makes the following recommendations to the international community and other bilateral partners:**

(a) **Consider budgetary implications when making recommendations, to ensure they are fully funded, thus lightening the burden on States, particularly those emerging from conflict or civil strife;**

(b) **Support the Federal Government and Federal Member State governments in the implementation of the Joint Human Rights Programme, the Drought Impact and Needs Assessment, the Resilience and Recovery Framework and the Durable Solutions Initiative to enhance the protection and resilience of victims of displacement caused by conflict, drought and floods;**

(c) **Continue its financial support for the Federal Government and AMISOM in their fight against Al-Shabaab;**

(d) **Coordinate with the Federal Government and AMISOM regarding the implementation of the financing of the transition plan in the security sector and the training of Somali National Security Forces and the police, in order to ensure that they discharge their law and order, security and defence obligations effectively;**

(e) **Ensure that the justice sector reform programme is adequately, commensurately and appropriately funded in order to enhance the capacity of human rights and justice institutions, so that they can underpin democratization after the transition period;**

(f) **Provide financial resources to AMISOM to enable it to compensate civilian casualties and to provide support for pre-deployment training;**

(g) **Resume funding to troop-contributing countries that are not able to finance their own pre-deployment training;**

(h) **Ensure that any withdrawal by AMISOM from Somalia meets the realistic conditions and timelines after proper strategic analysis of the threat that may be posed by a hasty withdrawal.**

93. **The Independent Expert further makes the following recommendations to AMISOM:**

(a) **Continue to work on its gradual withdrawal from Somalia on the basis of Security Council resolutions and the conditions set forth in the transition plan, in particular the readiness of Somalia National Security Forces to take over security responsibilities;**

(b) **Continue to implement the civilian casualty tracking system in order to minimize the accidental deaths of civilians and to ensure accountability for civilian deaths;**

(c) **Ensure that human rights training for its troops is continuous in order to ensure compliance with the human rights due diligence policy on United Nations support to non-United Nations security forces, and share the results of its Board of Inquiries investigations with the Federal Government of Somalia and the United Nations partners during their regular consultations, which should also exercise confidence in the AMISOM Boards of Inquiries.**

94. **The Independent Expert makes the following recommendations to civil society:**

(a) **Continue its advocacy work for the provision of adequate resources from the international community, Governments and the private sector, to enable it to discharge its promotional mandates;**

(b) **Continue advocacy for the rights of marginalized groups, including internally displaced persons, members of minority clans, women, children, elderly persons and persons with disabilities;**

(c) **Ensure advocacy and public sensitization about the role of the National Human Rights Commission to ensure that it is properly funded by the Government and that it exercises its independence and impartiality.**

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Technical assistance and capacity-building

Report of the Special Rapporteur on the situation of human rights in Cambodia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith, submitted pursuant to Council resolution 36/32. It covers the period from June 2017 to June 2018, during which the Special Rapporteur undertook two missions to Cambodia.

The Special Rapporteur observes that strong economic growth has provided resources to improve social protection and access to education, decent work and health care. However, she expresses concerns about regression of political rights and the enjoyment of fundamental freedoms, which continue to have implications for the protection and promotion of all human rights in the country. Human rights defenders are particularly at risk.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 36/32. During the year under review, the Special Rapporteur monitored the situation of human rights in Cambodia, receiving information from different stakeholders, including the Government, civil society organizations and private citizens. She undertook two missions to Cambodia: from 8 to 17 August 2017 and from 5 to14 March 2018. The present report covers the period from June 2017 to June 2018, drawing on the findings from the two missions as well as other information received throughout the year.

2. The Special Rapporteur is grateful to the Government for its cooperation during her missions.

3. During the missions, the Special Rapporteur met with government representatives and other stakeholders, including civil society organizations, the United Nations country team and other development partners. In particular, the Special Rapporteur met with Samdech Heng Samrin, President of the National Assembly; Samdech Kralahom Sar Kheng, Deputy Prime Minister and Minister of Interior; Prak Sokhonn, Senior Minister and Minister of Foreign Affairs and International Cooperation; Aun Pornmoniroth, Senior Minister and Minister of Economy and Finance; Ang Vong Vathana, Minister of Justice; Hang Chuon Naron, Minister of Education, Youth and Sports; Mam Bunheng, Minister of Health; Vong Sauth, Minister of Social Affairs, Veterans and Youth Rehabilitation; Keo Remy, Chair of the Cambodian Human Rights Committee; Sik Bun Hok, President of the National Election Committee; You Bun Leng, President of the Court of Appeal; You Ottara, Deputy President of the Supreme Court; Sou Arafad, Deputy Governor of Battambang Province; and Om Reatrey, Deputy Governor of Banteay Meanchey Province. She also met with the then leader of the now dissolved Cambodia National Rescue Party (CNRP), Kem Sokha, in August 2017, as well as a range of political actors and other stakeholders.

4. It was regrettable that during both missions again she was denied confidential interviews with detainees and, indeed, access to Correctional Centre 3 to visit Kem Sokha. The Special Rapporteur visited the Phnom Penh Social Affairs Drop-in Centre (Prey Speu Centre), Correctional Centres 1 and 2 and Phnom Penh Capital Prison. During field visits to Battambang and Banteay Mancheay Provinces in August 2017, she was invited to visit drug rehabilitation centres and visited Chivit Thmey Drug Rehabilitation Centre.

5. Finally, the Special Rapporteur is encouraged by the Government's willingness to respond to communications submitted by special procedure mandate holders and welcomes this opportunity for deepening dialogue and understanding.

II. General situation of human rights in Cambodia

6. The year under review was marked by significant political developments. It began with the local-level election on 4 June 2017 and ended as the country neared the general (National Assembly) election on 29 July 2018. The commune/*sangkat* elections were orderly and peaceful, with some 90 per cent of the electorate casting votes. Unfortunately, subsequent events meant that the results of these elections were changed dramatically, albeit in accordance with new laws. The President of the former main opposition party, CNRP, Kem Sokha, was detained in September on treason-related charges. On 16 November, the Supreme Court ordered the dissolution of CNRP and banned 118 senior members from political activity for five years. The CNRP seats in the National Assembly and positions at the communal level were then reallocated to other parties, principally the ruling Cambodian Peoples' Party (CPP).

7. The political situation continues to have implications for the protection and promotion of all human rights in the country. Human rights defenders are particularly at risk in this twentieth anniversary year of the adoption of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human

Rights Defenders). In particular, a letter from the Minister of Interior dated 2 October 2017 requires non-governmental organizations (NGOs) to provide three-day prior notification to authorities for any events. The Government has indicated that this is to provide coordination, security, safety and order to civil society organization activities. This stipulation is not contained in the Law on Associations and Non-Governmental Organizations or the Law on Peaceful Demonstrations. Police systematically monitor civil society events. The Government has revoked the licences of some independent radio stations, independent media have had to shut down due to large tax bills and independent journalists have been charged with "espionage". In May 2018, the Inter-Ministerial Proclamation (Prakas) on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia was adopted. The proclamation seeks to prevent publications or news through social media and the Internet on very broad grounds, such as "deliberately causing chaos" or "harming the national economy" or "traditional culture".

8. During the interactive dialogue with States parties and other stakeholders at the thirty-sixth session of the Human Rights Council, many States invited the Special Rapporteur to pay particular attention to the human rights impact of the political situation in Cambodia ahead of the 2018 national elections. The present report was finalized and submitted before the date of the elections. However, the Special Rapporteur analyses the impact of the elections and electoral processes on human rights and fundamental freedoms in an addendum.

9. Cambodia remains a member of the Association of Southeast Asian Nations and a lower-middle-income country. According to current estimates, it has maintained an economic growth rate of almost 7 per cent, which is likely to continue for at least the next two years. The Government has not approved any figures after 2014.

10. The Government has committed to finalize the localization of the Sustainable Development Goals by the end of 2018. There remains evidence of progress towards greater realization of several related rights and freedoms. For example, the country's strong economic growth and rapid development has provided resources to improve social protection and access to education, decent work and health care. However, challenges remain, not least with goal 16.

11. The 2030 Agenda for Sustainable Development explicitly recognizes that the promotion and protection of human rights is both a prerequisite to achieving the Sustainable Development Goals as well as a result. The principle of leaving no one behind is perhaps the clearest expression of this link. Indeed, respect for human rights is an integral part of ensuring lasting development and peace in Cambodia. Nevertheless, over the past year, government ministers, both during meetings and through the submission of official documents, have addressed comments to the Special Rapporteur that prioritize peace, stability and development over human rights. Respect for rights and freedoms are enshrined in the Cambodian Constitution and Cambodia has ratified almost all the core human rights treaties. Human rights cannot be selectively respected or ignored, and they must never be sacrificed. Peace without justice is unsustainable; development without freedom leaves people behind.

12. During the period 2017–2018, the Government of Cambodia has published several statements aimed at "clarifying and setting the records straight" on various issues related to human rights. It has criticized both the United Nations generally and special rapporteurs, without any evidence base. The Special Rapporteur has countered these criticisms directly with the Government and calls on the Government to remove such criticisms from official publications and statements and undertake not to repeat them. Such action would help to promote constructive and meaningful dialogue on human rights issues.

III. Update on recommendations in the previous report

13. The Special Rapporteur made a series of recommendations in previous reports. With a view to maintaining a dialogue with the Government, she reviews the recommendations made in her previous report to the Council (see A/HRC/36/61, para. 68) as follows:

(a) It is understood that recent discussions on implementation of the recommendations of the universal periodic review have focused on preparation of the next report of Cambodia under the third cycle, which is due for review early in 2019. The Special Rapporteur welcomes the submission this year of the combined fourteenth to sixteenth periodic reports to the Committee on the Elimination of Racial Discrimination and the sixth periodic report to the Committee on the Elimination of Discrimination against Women;

(b) The Sustainable Development Goals localization plan was supposed to be finalized at the end of the second quarter of 2018; however, the national high-level committee, at its meeting on 24 April 2018, requested revisions and a reduction of the number of indicators. Approval of the Council of Ministers is now scheduled to be sought during the third quarter of 2018. An action plan for ensuring peace, justice and strong institutions (goal 16), with the elaboration of comprehensive indicators to measure achievement, would support the work of the ministries, including, for example, the Ministry of Justice, in strengthening the independence of the courts. The localization plan should also include action plans for reducing poverty (goal 1), ensuring health and well-being (goal 3), ensuring full and productive work for all (goal 7), addressing food security and clean water (goals 2 and 6) and reducing inequalities (goal 10). These goals are key for protecting marginalized persons and promoting their enjoyment of rights and freedoms;

(c) The process for granting communal land titles remains unchanged. The Special Rapporteur encourages further discussions on refining the process and accelerating recognition of indigenous groups and their land claims;

(d) Court fees are still not publicly displayed in all courts, as the Ministry of Justice is reportedly finalizing the list;

(e) Notices that no payments are to be paid to staff in prisons are not displayed at all detention centres; posters listing detainees' rights have been distributed but are not displayed at all detention centres (some are displayed only in English);

(f) Pretrial detention and custodial sentences continue to be extensively used. The Special Rapporteur reminds the Government that a fair trial must be held within a reasonable time of the initial arrest. This is particularly pressing when people are held in pretrial detention. In view of the dramatic increase in prison overcrowding (due in part to the anti-drug campaign), the Special Rapporteur urges the Government to reconsider the plans to increase the use of non-custodial sentencing in those situations in which it is deemed appropriate. The Special Rapporteur also encourages the Government to promote the use of the pretrial detention form to ensure appropriate reflection by judges on whether pretrial detention is appropriate (article 203 of the Criminal Procedure Code notes that provisional detention should be exceptional);

(g) Some human rights defenders have been released from pretrial detention although they remain under judicial supervision; other defenders continue to be held in pretrial detention. The Special Rapporteur, while welcoming the release of the five serving and former staff members of the Cambodian Human Rights and Development Association (ADHOC) in June 2017, reiterates her call for the charges against them to be definitively dropped. It is a violation of the right to be tried without undue delay for charges to linger indefinitely and be reactivated seemingly at random. Further high-profile examples include Tep Vanny (2013 charges reactivated in 2017 with arrest, conviction and custodial sentence) and Nhek Bun Chhay (2007 charges reactivated in 2017 with arrest in August, released under judicial supervision in May 2018);

(h) Measures on the human rights environment around the elections are outlined below and in the addendum. There is concern over threats, arrests and acts of intimidation in the current period.

14. With regard to the recommendations contained in paragraph 69 of her previous report:

(a) Work remains to be done on strengthening judicial mechanisms for addressing domestic violence and trafficking. Concerns continue to be raised over the

treatment of women victims by law enforcement officials, including in cases of rape, assault and murder;

(b) Implementation of the Law on Peaceful Demonstrations has been impeded by the Ministry of Interior instruction of October 2017, referred to above. Irrespective of the intention, the instruction is being applied as if it were an approval process and a restriction on peaceful gathering, trainings and meetings. There are no such provisions under the Law on Associations and Non-Governmental Organizations or the Trade Union Law;

(c) Provisions of the Criminal Code are being used to inhibit freedom of expression and debate, including provisions on conspiracy. Amendments to the Constitution and the Criminal Code made in February 2018 use broad terminology and need more precise language to meet international standards and avoid the risks to freedom of speech. Areas of concern include the lèse-majesté provisions and requirement for parties and individuals to "primarily uphold the national interest" and oppose "interference from abroad";

(d) Sixteen courts of first instance have installed the criminal case database. However, there has been no progress on publishing decisions or on developing draft guidelines on evidentiary requirements. The Cambodia Office of the United Nations High Commissioner for Human Rights (OHCHR), the Ministry of Justice and the Supreme Council of the Magistracy organized two regional trainings for judges focusing on legal reasoning for decisions on pretrial detention;

(e) People continue to be held involuntarily in "drop-in" centres, including the Prey Speu Centre. However, the number of persons held in detention centres in connection with alleged use of drug substances continues to increase. New facilities being built in Kandal Province to rehabilitate persons with psychosocial disabilities have not yet opened.

IV. Vulnerable groups and discrimination

15. International human rights are predicated on the premise that all persons should enjoy all freedoms and rights without discrimination. In all societies, however, there are marginalized groups whose enjoyment of rights is compromised in some way. Sustainable Development Goal 10 is aimed at reducing inequality within and between countries. International law is clear that rights and freedoms should be enjoyed without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation, gender identity, disability or other status. In her reports (A/HRC/33/62 and A/HRC/36/61), the Special Rapporteur has considered the situation of indigenous peoples, women, prisoners, persons in street situations, minorities and children. In August 2017, her mission had a subfocus on vulnerable children (in institutions and trafficked). In this section the Special Rapporteur provides findings and updates on vulnerable groups in Cambodia. Considering marginalized groups is especially important as the Government is in the process of finalizing its localization plan for the Sustainable Development Goals to ensure that no one in Cambodia is left behind.

A. Children

16. Cambodia has a growing population of young people and an ever-more-mobile population. Children are inherently vulnerable, especially when young, and often suffer multiple disadvantages as facets of marginalization intersect. The interdependency and interrelatedness of rights means that children's enjoyment of rights is often linked to that of their primary caregiver. Consequently, children whose parents are at risk of being left behind are themselves particularly vulnerable. Cambodia has ratified the Convention on the Rights of the Child, and its combined fourth to sixth periodic reports, due on 13 May 2018, is pending submission to the Committee on the Rights of the Child.

17. Education is especially relevant to children and to their development. Previous reports (A/HRC/30/58 and A/HRC/27/70) have addressed progress in education. Education

is becoming more accessible and available to all children in Cambodia. The Ministry of Education, Youth and Sports continues to invest in education throughout the country and works to eliminate corruption, for example, by eliminating cheating and related practices in end-of-school exams.

18. The Ministry reports continuing progress towards securing gender parity not only in education enrolment, but also completion. Beyond gender equality, some children are in danger of being left behind on the basis of ethnicity or disability. While there is progress with the rolling out of the multilingual education plan of action, the Special Rapporteur highlights ongoing concerns with the situation of children from indigenous and ethnic minority groups, including children of Vietnamese descent, who still suffer disadvantages, including in relation to the availability, accessibility, acceptability and adaptability of education. Information has been received that children have been denied access to school due to the lack of legal documents of their ethnic Vietnamese parents or the revocation of those documents under subdecree 129. Concerning education and health, it is also clear that children with disabilities do not receive equal access to goods, services or facilities. For example, physical access to buildings remains a problem as does the availability of information in sign language and Braille.

19. Health care of children and mothers is crucial to the development of the child. New social protection initiatives and pilots are discussed below. The Ministry of Health is working at commune level throughout the country to ensure that access to primary health care is available to all. Infant and child mortality rates continue to decrease, regional transmission of measles has been eliminated completely in Cambodia, the use of anti-viral therapy limits transmission of HIV/AIDS from mother to child during birth and health equity funds help to ensure free access to health care for the poorest families, including their children. The Government has also embarked on a human papilloma virus vaccination programme for girls to combat cervical cancer. However, child malnutrition, especially in rural areas, remains of concern.

20. Ensuring all children are registered at birth is a major milestone in recognizing the rights of the child. In this regard, the removal in 2017 of charges for birth registration up to 30 days after birth is welcome.

21. In the absence of a comprehensive child protection system, and no social workers at the commune or district levels, cases of child abuse and neglect go undetected and unreported. The commune committees for women and children are important, within their capacity, at the local level. Although training of committee members has been undertaken, the Special Rapporteur is concerned that this may not be sufficient to offer adequate, acceptable, adaptable child-centred protection.

22. In particular, ever more children are being left with elderly relatives when their parents become migrant workers, moving to factories or construction sites in Cambodia or seeking employment overseas. Information received suggests heightened vulnerability for some of these children: some are abused, others turn to drugs and other substances, some end up in street situations. Children who suffer physical or psychological abuse within the community or family frequently have no means of seeking assistance or safety. The Government's Violence against Children Survey and Action Plan is a step in the right direction, but victims of violence all too frequently remain in the household with the perpetrator and the perpetrator is not brought to justice in accordance with the Law on the Prevention of Domestic Violence and the Protection of Victims.

23. Cambodia has many children living in institutional settings. Efforts to restrict "orphanage tourism" have been successful and the Ministry of Social Affairs, Veterans and Youth Rehabilitation is now focusing on reducing the number of children in care. The Action Plan for Improving Child Care, in cooperation with the United Nations Children's Fund (UNICEF), civil society organizations and the Partnership Programme for the Protection of Children, is aiming at reducing by 30 per cent the number of children in institutional settings in five provinces, reintegrating them into their communities. This is a positive pilot programme from which many lessons for the future will undoubtedly emerge.

24. Poverty is a key factor in many children being in residential care, working and being trafficked. It follows that the work on returning children to their families should address

several of the targets of the Sustainable Development Goals, including reducing poverty (target 1.2), implementing nationally appropriate social protection systems (target 1.3) and promoting social, economic and political inclusion of all (target 10.2). It is of primary importance that programmes prioritize the best interest of the child.

25. There is no comprehensive network of government social workers in Cambodia. Ideally, there should be at least one social worker per commune, supported by a team of social workers at the district level. Much child protection and rehabilitation work is undertaken by social workers funded by NGOs and by United Nations agencies. The Special Rapporteur encourages the Government, in furtherance of the National Social Protection Policy Framework 2016–2025, to consider actively recognizing, promoting and supporting social work education and career opportunities. Trained social workers can work with the commune committees for women and children in the communes to better protect children and other vulnerable people.

26. The Ministers of Justice and of Social Affairs, Veterans and Youth Rehabilitation continue to work on the joint implementation of the Law on Juvenile Justice promulgated in 2016. The Special Rapporteur welcomes this law but reminds the Government that it must take care to ensure that it implements the law in compliance with the Convention on the Rights of the Child and related guidelines. It is necessary to fully resource the new juvenile justice system, including the new centres for rehabilitation, which must conform to the relevant United Nations standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

27. There have been reports of delays in accurately ascertaining the ages of juveniles following arrest to determine whether they are below or above the minimum age of criminal responsibility — or indeed whether they are juveniles or young adults. With respect to children who are witnesses and victims of crimes, the Special Rapporteur has received information that few courts have the necessary screens and audiovisual facilities to permit remote testimony. Children therefore risk further exposure to the alleged perpetrator and revictimization.

28. The Special Rapporteur remains concerned that security forces and families are taking juveniles to drop-in and rehabilitation centres, as well as to residential care institutions. While this can be a consequence of the anti-drug campaign, there are worrying reports that children with serious disabilities are being detained in these facilities although they have no history of drug or substance dependency. This situation emphasizes the need for comprehensive social and child protection systems in Cambodia and appropriately trained social workers in all communes. However, it also raises issues of comprehensive support for children with disabilities and their families.

29. It is hoped that the Government will embed a child rights-based approach in all matters related to children. Children in street situations and in institutional settings, unaccompanied migrant children and trafficked children are especially vulnerable and require a holistic approach to their safety and well-being. The rehabilitation and reintegration into communities of juvenile drug and substance users with dependency problems and convicted juveniles must be subject to careful management and ongoing support to ensure genuine rehabilitation and reintegration. It is necessary to ensure adequate awareness-raising on children's rights and the Law on Juvenile Justice among all law enforcement officials and judicial officers.

B. Indigenous peoples

30. The Special Rapporteur is pleased to note that the Ministry of Education, Youth and Sports continues to enhance education provision, including bilingual education for indigenous peoples. The Special Rapporteur observed an awareness across ministries that indigenous peoples are still being left behind. She notes that specific attention to ensuring the rights of indigenous peoples in all action plans and cross-ministerial operations should contribute to a more holistic response to issues affecting the rights of indigenous peoples.

31. Concern remains over land titling for indigenous peoples. In August 2017, the Special Rapporteur learned of the Por indigenous people in Battambang Province, whose communal land titling process could not proceed because the land was still waiting to be demined. In this connection, it is noted that Cambodia has added a sustainable development goal 18 on removing unexploded ordnance.

32. In Stung Treng Province, the Lower Sesan II hydroelectric project has resulted in the Bunong indigenous people losing their homes and much of their spiritual forest and burial grounds to the reservoir's water, leaving them at risk of losing their livelihoods. In Preah Vihear Province, the Kui indigenous people have had some of their farmland and spiritual forest cleared by sugar cane companies. Both the Bunong and the Kui indigenous peoples are waiting to have their land registered as communal land.

33. The Special Rapporteur repeats her recommendation that the Government consider simplifying the communal land titling process to make it more accessible and affordable for indigenous communities. As of June 2018, of the estimated 455 indigenous communities in Cambodia, 141 had been recognized as indigenous by the Ministry of Rural Development; of these, 128 had been legally registered by the Ministry of Interior, of which only 24 had been issued collective land titles.

C. Asylum seekers and refugees

34. While Cambodia has offered itself as a place of refuge to those being resettled from Nauru, there continue to be problems for Montagnards who sought asylum in Cambodia. In August, the Special Rapporteur expressed concerns about the situation of 36 Montagnards for whom the Office of the United Nations High Commissioner for Refugees had offered to find a solution outside of Cambodia, based on the seriousness of their asylum claims. The Government of Cambodia has to date not agreed to facilitate their transit to a safe third country, and indeed announced plans for their deportation back to Viet Nam in September. Cambodia should respect the principle of non-refoulement and ensure that no one is forcibly returned to a country where they are in danger of persecution.

D. Persons in street situations

35. In August 2017, the Special Rapporteur was very concerned after her visit to the Prey Speu Centre, particularly about the 544 people, including 6 children, then detained there. This was a substantial increase since her previous visit, and was partly attributable to the Government's anti-drug campaign. There was no visible improvement in the facilities, only more overcrowding. Since then, the Special Rapporteur has received reliable information indicating that children were no longer detained at the centre and that some structural improvements had been made such as the construction of basic bathrooms with running water and the installation of electricity and ceiling fans.

36. The Minister of Social Affairs, Veterans and Youth Rehabilitation explained that a new facility being built in Kandal Province should alleviate overcrowding at Prey Speu, providing appropriate facilities for the care and treatment of persons with psychosocial disabilities. This facility will not be ready until later in 2018.

37. Despite claims by the authorities that those "rounded up" and brought to the centre must remain there for a week to enable arrangements to be made with their families to collect them, most people who met with the Special Rapporteur had been there for considerably longer and many claimed they were being held against their will. This amounts to arbitrary detention: it is consistent neither with the concept of "drop in" nor with law. It is clear that in the case of children, the authorities must take care to determine the identity of the person and to verify the identity of a family member who wishes to collect them. However, in other cases people should be allowed to leave at will.

38. The Government is reminded that holding persons against their will means that drop-in centres fall within the international definition of detention centres and the Government must therefore take steps to ensure that the minimum standards of treatment

for detainees is met. This means that detainees must have access to clean drinking water, adequate nutritious food, adequate sanitation, ventilation and adequate health care including psychosocial support, as well as visitation and communication rights with their relatives. More pertinently, no one should be arbitrarily detained or locked up in rooms against their will.

39. The Special Rapporteur repeats her call for the Government to implement the recommendations of the National Conference on Persons in Street Situations held in 2015 and to ensure that drop-in centres are not used as detention centres but offer the necessary care, services and assistance to persons in street situations on a truly voluntary basis. She also recommends that the Government accurately identify each individual, systematically review the legal basis for their detention and work to ensure their release and return to their families and communities, including as well as their participation in social protection and livelihood programmes.

E. Drug and substance users with dependency problems

40. In January 2017, the Government commenced the first phase of its campaign against drugs. This programme is now in its second phase. A worrying consequence has been the explosion in the number of people held in prisons, social affairs centres and drug rehabilitation centres. The Government reports that in 2017, 17,795 people (including 1,584 females) were arrested in connection with drug offences: 9,590 (1,118 females) for drug trafficking; 7 (2 females) for drug processing/production; 1 male for substance planting; and 8,197 (464 females) for drug use. Within the first five months of 2018, anti-drug police dealt with 3,192 drug offences and arrested 6,367 people (including 557 females). Of these, fewer than half were sent for treatment; the rest were sent to prison. According to 2017 prison population statistics, among the total population of 28,414 prisoners, 51.7 per cent were detained for drug-related offences.

41. During the reporting year, the Special Rapporteur visited the Chivit Thmey Drug Rehabilitation Centre in Banteay Meanchey, the Prey Speu Centre, Correctional Centres 1 and 2 and the Phnom Penh Capital Prison. The Special Rapporteur observed a very large number of people being detained apparently due to the anti-drug campaign. Overcrowding is such that conditions in many places of detention breach Cambodian and international standards. Adequate food, clean water, sanitary facilities, exercise opportunities, room ventilation and health care are lacking. The system is simply overwhelmed. Given the number of institutional places where drug users may find themselves, the Special Rapporteur once again reminds the Government that if people are held against their will, the facility is de facto a place of detention as defined in the human rights standards accepted by Cambodia and that the families, legal counsels and others who may lend support should be allowed free access to those detained.

42. During the March 2018 mission, the Ministry of Interior informed the Special Rapporteur that the Government was building a rehabilitation centre in Preah Sihanouk Province where 2,000 drug users with dependency issues could be brought for treatment and vocational training and better reintegration services. With rehabilitation as a goal, it is important to ensure that adequate training and education are available, particularly for younger people, to enable successful reintegration into the community. Appropriate training and education should be provided by the Ministry of Labour and Vocational Training and the Ministry of Social Affairs, Veterans and Youth Rehabilitation and providing education opportunities through the Ministry of Education, Youth and Sports should be considered.

43. According to a Ministry of Health report of 26 January 2018, there are currently 419 centres offering community-based treatment for drug use and dependence substances. This includes services in two national hospitals and 24 provincial referral hospitals (representing 100 per cent of the Ministry's target). In addition, 72 district referral hospitals (85 per cent of the Ministry's target) and 321 commune health centres (27 per cent of the Ministry's target) provide such services. Basic training in treatment and care services for people with mental health and drug-dependency issues was provided.

44. The Ministry has also cooperated with international specialists to train 21 national master trainers on counselling, care and treatment services for substance abusers. The Special Rapporteur welcomes the plans of the Ministry to progress with work on counselling and recognized therapies to reduce cravings, particularly given the prevalence of methamphetamine use. These centres support those with drug dependencies who remain in communities.

45. The Special Rapporteur welcomes the awareness-raising programme on drug and substance abuse being implemented through the Ministry of Education, Youth and Sports.

F. Prisoners

46. The prevalence of pretrial detention, the lack of alternatives to custodial sentencing and the ongoing anti-drug campaign combine to increase the pressure on prisons. The Government notes a 35 per cent increase in the number of prisoners between 2016 and 2017, attributing this to the anti-drug policies. Overcrowding has reached such levels at some detention centres that prisoners can no longer be appropriately segregated; juveniles and adults are mixed, as are pretrial and post-conviction detainees. Conditions in prisons vary. The Ministry of Interior is aware of the problem and notes that it is working on improving access to recreation facilities and outdoor areas. In March 2018, the Special Rapporteur visited Phnom Penh Capital Prison. The conditions there were noticeably better in terms of numbers in cells than in Correctional Centres 1 and 2. As of 31 May 2018, according to government records, there were 28,829 people in detention, of whom only 7,684 had received a final, confirmed conviction. The Special Rapporteur was concerned to learn of plans for a pay-per-stay prison with improved conditions for those willing to privately fund their detention. All detainees should be afforded the same conditions of detention, conditions that meet, and even exceed, the minimum standards specified in the United Nations treaties Cambodia accepts and additional guidelines.

G. Persons with disabilities

47. Given the ongoing efforts of the Government and its chosen partners to clear land of unexploded ordnance and the deep psychological trauma suffered by so many during the Khmer Rouge era of Democratic Kampuchea and civil war periods, Cambodia should be a leading country in the rights of persons with disabilities.

48. While the Special Rapporteur received information about positive measures in place to protect the rights of persons with disabilities, the lack of centralized data on persons with disabilities and the lack of documentation certifying that they are persons with disabilities often hamper their access to specific services, particularly those related to health. Reports of discrimination at schools, health centres and private banks reinforce the need to continue building awareness among the population on the rights of persons with disabilities. Access to justice also remains a challenge for persons with disabilities, whether victims or alleged offenders.

H. Women

49. The Special Rapporteur reiterates her concerns about the issues of violence against women and diversion to mediation, the need for destigmatization of victims of domestic and sexual violence and education and awareness-raising on these matters, issues that were also raised by the Committee on the Elimination of Discrimination against Women in its examination of the report of Cambodia (CEDAW/C/KHM/CO/4-5). The Special Rapporteur welcomes the information provided by the Ministry of Women's Affairs that an increasing percentage of women who suffer intimate partner violence have been able to leave abusive relationships. However, she remains concerned at the number of cases in which women feel forced to live with an abuser and the instances of sexual violence and assaults, including rape, that go unpunished. Many sexual assaults, including alleged rapes, do not result in prosecutions; some cases remain open for several years after the claimed

attack. Women remain reluctant to report rapes and other sexual assaults. The Law on the Prevention of Domestic Violence and Protection of Victims is not fully aligned with the Convention on the Elimination of All Forms of Discrimination against Women and, unfortunately, its implementation still results in the diversion of domestic violence cases to mediation, especially when the victim so requests. The Special Rapporteur welcomes the fact that the Ministry of Women's Affairs is beginning an assessment of the effectiveness of the implementation of the law in order to improve its enforcement. Sexual harassment is not clearly defined in law beyond article 250 of the Criminal Code and awareness remains low.

50. The Special Rapporteur has raised the issue of the role of women in politics in previous reports (see A/HRC/33/62, para. 22 and A/HRC/36/61). She has reminded the Government that article 4 of the Convention on the Elimination of All Forms of Discrimination against Women permits temporary special measures to redress imbalances. The Committee on the Elimination of Discrimination against Women has twice recommended temporary special measures to increase the representation of women in decision-making positions, especially in politics, the judiciary and the foreign and diplomatic service (see CEDAW/C/KHM/CO/3, para. 14 and CEDAW/C/KHM/CO/4-5, para. 29). According to information available to the Special Rapporteur, as of June 2018 women made up 20 per cent of the National Assembly (before the 2018 July election) and 11 per cent of the Senate (after the February 2018 election). It is noted that there have been some efforts in the civil service to have more women in decision-making positions. These include increasing the retirement age for women civil servants on a voluntary basis and the setting of a target of 20–50 per cent of newly recruited civil servants being women. The Special Rapporteur encourages the implementation and monitoring of these targets.

51. In an effort to regulate surrogacy and provide relevant protection to the women and children involved in such arrangements, a draft law was completed in April 2018. The Special Rapporteur welcomes the fact that the draft was shared with her and she will provide comments to support its compliance with international human rights standards.

V. Strengthening social protection, health and education

52. In anticipation of the Sustainable Development Goals localization plan, the Special Rapporteur has been building on her work on marginalized groups, seeking to better understand resource mobilization and prioritization decisions in the context of the progressive realization of socioeconomic rights in Cambodia. Cambodia is still experiencing rapid and strong economic growth which has provided resources to improve social protection and access to education, decent work and health care. In March 2018, the Special Rapporteur met with the Minister of Economics and Finance and was impressed by the strategic plans being implemented to improve budget reporting and tie budgetary decisions to measurable outcomes. The need to prioritize investment in human rights and related Sustainable Development Goals should manifest itself in the localization plan.

53. The Special Rapporteur was encouraged by the Government's plans to develop social security and health equity funds and to work towards universal access to health care. A consequence of low public spending on health so far has been the extremely high burden of patient out-of-pocket health expenditure. Health expenditure is an issue for households and is the largest part of household non-food expenditure in Cambodia. Health care and social security are expensive but always a worthwhile investment by the Government in its people.

54. Furthermore, recent pilots have been undertaken on transferring funds to pregnant women and those who have recently given birth. The new maternity pay for women in the textile sector (120 per cent of salary for three months) is also positive. All such plans and strategies need to be adequately resourced and robustly monitored; in Cambodia, as around the world, pregnant women continue to lose their jobs for spurious reasons when their pregnancy is apparent or notified. The "official" reasons for this vary, but women ultimately lose their jobs, and the associated benefits, at a time when they and their children are especially vulnerable.

55. Despite the efforts of the Government, some people continue to find that they cannot access free health care services despite having the relevant National Social Security Fund and Health Equity Fund cards. Persons with disabilities are also affected. The Special Rapporteur encourages the Government to continue its investments in health, social security and education and to work across ministries and at all levels of government to ensure that these services are available, accessible, acceptable and of high quality for all Cambodians.

VI. Land

56. According to government figures, as of December 2017, the Government had issued titles for 4,881,582 plots of land, representing 66.4 per cent of the country's estimated 7 million parcels of land, with a target of 100 per cent by 2023. However, Cambodia continues to be marked by protracted land disputes that affect the basic rights of affected families and communities.

57. Dispute resolution mechanisms under different ministries and government bodies continue to operate in isolation, without transparent or participatory procedures and without minimum requirements for the fairness of the resolution of the land disputes and remedies. While some disputes, such as those relating to sugar concessions in Koh Kong, are being resolved, disputes relating to other sugar concessions in the Provinces of Kampong Speu, Preah Vihear, Koh Kong and Oddar Meanchey remain unresolved. The Government claims that these disputes have been and are being processed in a legitimate, accessible, transparent, predictable and rights-compatible manner. The Special Rapporteur notes that without a transparent, legitimate, accessible, predictable, equitable and rights-compatible process in the settlement of disputes with sugar companies, there is a risk of continued conflict and unrest.

58. The Special Rapporteur highlights the need for a coherent resettlement policy in Cambodia, including measures to ensure compensation for land expropriation taking into account the need for public consultative processes with communities and their representatives as well as civil society organizations. The lack of such a policy has contributed to the current situation in which, in many instances, basic legal and human rights obligations have been ignored and documentation, guidance and compliance with various approaches often lacking, resulting in adverse impacts on the livelihoods of relocated families and communities. The Special Rapporteur highlights the need for an independent assessment of resettlement sites in Cambodia with a view to improving the living conditions at those sites.

59. During the March 2018 mission, the Special Rapporteur learned that on 8 March 2018 in Snoul District, Kratie Province, members of the armed forces opened fire on protesters and destroyed personal belongings and shelters. The incident was related to a land dispute and unsuccessful negotiations on resettlement between the community, the Memot Rubber Plantation Company and the Kratie Provincial Working Group on Land Dispute Resolution. The Special Rapporteur followed the situation closely and raised concerns directly when meeting with government officials, including the Minister of Interior. The unrest in Kratie underlines the importance of understanding and addressing the root causes that lead to protests. These causes — often related to denial of human rights — must be addressed in a fair manner if peace, stability and development are to be sustainable. The Special Rapporteur regrets that OHCHR and civil society observers were prevented from entering the area where the shootings took place. In the interests of promoting trust and transparency, the Special Rapporteur believes it is important to allow independent monitors access.

60. On 22 March 2018, the seventh national consultation workshop on the tenth draft environment and natural resources code was conducted with the participation of various stakeholders. The process has been lengthy, but participatory. In November 2017, following the Prime Minister's order conveyed in a public speech, the Ministry of Agriculture, Forestry and Fisheries announced the suspension of the drafting process of the agriculture land law. The draft had been controversial, with farmers' groups and NGOs protesting against it because of its restrictions on the rights of small farmers.

VII. Evaluating the "democratic space"

61. During the year under review, the question of the application of the range of laws discussed in her report (see A/HRC/33/62, paras. 28–34), compounded by new laws and directives, continued to be an issue for the Special Rapporteur. An ever-increasing number of laws are being used in Cambodia to restrict free expression and political dissent. Charges of insurrection, incitement to commit a felony, bribery, defamation, forgery and conspiracy with foreign Powers have all been invoked during the year to charge independent or dissenting voices, including journalists and representatives of NGOs, or keep them in detention. The application of the provision in the Law on Associations and Non-Governmental Organizations that NGOs must be politically neutral is proving increasingly problematic when many activities deemed to be critical of the Government are considered "political".

62. In the letter to subnational authorities dated 2 October 2017 referred to above, the Minister of Interior stated that civil society organizations would be required to notify the commune and district authorities three days in advance of all activities, including education and training activities. Such reporting requirements appear to be contrary to the Law on Peaceful Demonstrations and associated implementation guidelines. Although the Government claims the reporting is necessary to ensure the safety of NGO staff and facilitate the training, it is understandable that NGOs and associations consider it to be an intrusive form of monitoring and control.

63. Recent revisions to the Criminal Code and Constitution, including the introduction and application of a lèse-majesté provision, have paved the way for further curtailment of freedoms. The adoption in May 2018 of the Inter-Ministerial Proclamation on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, referred to above, increases surveillance of the Internet and social media while a National Election Committee statement on roles and duties of national and international observers issued the same month includes broad restrictions on freedom of expression which go beyond those permitted in the International Covenant on Civil and Political Rights. In practice, judicial actions continued to be brought against people for comments made on social media.

64. There has also been a reduction in freedom of the media in Cambodia. On 4 August 2017, the *Cambodia Daily* newspaper was served with a tax reassessment indicating tax arrears in the equivalent of some $6.3 million. The sum was due within 30 days and allegedly comprised tax owed plus interest. The paper's licence was not renewed and it published its final edition on 4 September, bringing to an end 24 years of independent reporting by the paper. Some 19 radio stations have been closed since August 2017. Radio is a major source of information in Cambodia so any restriction on licensing or access to bandwidths inevitably limits the freedom of Cambodians to receive information.

65. The Special Rapporteur raised a series of cases with the Government which she believed could lead to the creation of an atmosphere of fear and intimidation negatively affecting the right to freedom of expression of others, leading to self-censorship and inhibiting creative and responsible public debate on issues of public interest. This is particularly serious in the light of the national elections on 29 July 2018. Restricting Cambodians' voices could ultimately threaten the very stability that the Government and the people have worked hard to build. The freedoms of association, expression and peaceful assembly should be protected and developed, not restricted, in a multiparty liberal democracy.

VIII. Participation in the political process

66. The Special Rapporteur is concerned about developments in relation to participation in the political process during the last year. As noted above, the local commune/*sangkat*

IV. The 2017 local elections and its aftermath

16. In June 2017, the CPP won the majority of the positions, but the CNRP once again won approximately 44 per cent of the popular vote, consistent with its result in the 2013 National Assembly election.

17. The elections were generally commended as peaceful, orderly and overall transparent, with few reports of irregularities and a much-improved voter registration process.[51] There was nonetheless a tense pre-election environment and reports of Government intimidation. In particular, the Special Rapporteur received reports of opposition politicians being threatened and obstructed from campaigning, and of some civil society election-monitors subjected to intimidation and harassment.[52] In some instances, local CPP officials were apparently insisting ex-CNRP supporters to list their family members in CPP member books. Days before the election took place, senior officials reiterated the loyalty of the military to the ruling party and warned that civil war would erupt should the opposition win or the results of the communal elections be contested.[53] In a speech in Phnom Penh on 25 May 2017, the Prime Minister said that he was willing to eliminate 100-200 people to save millions.[54]

A. The dissolution of the CNRP

18. On 3 September 2017 Kem Sokha, leader of CNRP, was arrested on grounds of seeking to overthrow the Government in a foreign-backed so called 'color revolution'.[55] These were based on comments that he made in Australia in 2013 about his grassroots political strategy to challenge the current Government. Despite the passage of time, as the comments were still available online, this was deemed in flagrante delicto, and in accordance with internal rules of procedure, the National Assembly allowed the case to proceed without the need to lift his parliamentary immunity.[56] Kem Sokha was subsequently charged with conspiracy with a foreign power in 'fomenting hostilities or acts of aggression against Cambodia'. He remains in pre-trial detention as of August 2018, with restricted visitors, despite his detention having been found to be arbitrary by the United Nations Working Group on Arbitrary Detention in April 2018.[57]

19. Kem Sokha's arrest appears to have been followed by a general repression of CNRP members and supporters. Thereafter repeated information was received of CNRP meetings being interrupted and banners calling for release of Kem Sokha being destroyed in a number of provinces. OHCHR reported that some former members of the CNRP contacted them with respect to intimidation and threats of arrest by the police.[58]

20. In October 2017, following complaints made to it by FUNCINPEC and the Cambodian Youth Party, the Ministry of Interior submitted a request to the Supreme Court, under the aforementioned amendments to the Law on Political Parties, to dissolve the CNRP. On 16 November 2017, the Supreme Court, led by the Presiding Judge who is also a member of the CPP Standing Committee, dissolved the CNRP and banned 118 of its senior members from political activity for five years.[59] It is concerning that the evidence led by the Ministry of Interior and relied upon by the Supreme Court to dissolve the CNRP was in part the same allegations currently before the investigating judge in respect of the charges against Kem Sokha. No defence was submitted by the CNRP and the Supreme

[51] A/HRC/36/61, paras 59-60; A/HRC/36/32, para 17.
[52] A/HRC/36/61, para 63.
[53] A/HRC/36/32, para 16.
[54] https://www.cambodiadaily.com/editors-choice/hun-sen-goes-tirade-opponents-130441/.
[55] KHM 5/2017, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23334; see also CCPR/C/51/D/414/1990 at para 6.8.
[56] Article 80, Constitution of Cambodia.
[57] A/HRC/WGAD/2018/9.
[58] A/HRC/37/64, para 6.
[59] See also CCPR/C/12/D/34/1978, paras. 8.4 and 9.

Court's judgment does not test the Government's evidence. This raises serious concerns as to the evidentiary basis for the decision to dissolve.

21. Pre-empting the decision of the Supreme Court, the National Assembly passed amendments to a range of electoral laws in October 2017. This provided the process for reallocating seats won by any dissolved party. Following these guidelines, on 22 November 2017, the NEC re-distributed the 55 CNRP National Assembly seats won in 2013 to three political parties (FUNCINPEC – 41, Cambodian Nationality Party – 2 and Khmer Economic Development Party – 1). Two other parties refused (League for Democracy Party and Khmer Anti-Poverty Party), so the 11 remaining ex-CNRP seats were subsequently reallocated to the CPP.

22. Commune positions won by CNRP in the June 2017 election were also reallocated by the NEC in December 2017. The CPP gained 4,548 from the CNRP's 5,007 councillor positions and all 489 CNRP commune chief positions. Of the remaining commune councillor positions, 240 were given to FUNCIPEC, 203 to the Khmer National United Party, 10 to the Cambodian Nationality Party and three each to the Cambodian Youth Party and the Cambodia Indigenous People Democracy Party. The League for Democracy Party and the Grassroots Democratic Party refused to accept reallocated seats.

23. This reallocation raises serious questions with respect to the political representation of a significant portion of Cambodians, and further mars an already questionable dissolution process. The redistribution of seats effectively deprives millions of Cambodians of their rights of political participation. For those who voted CNRP in the 2013 national elections and the 2017 local elections, the candidates they elected were replaced by unelected people representing other political parties, who will retain this mandate until 2022 in the case of the local officials. The right to take part in the conduct of political affairs envisages the right to be represented through chosen representatives. The prospects raised in 2013 and 2017 of peaceful elections that could lead to a democratic change of Government had quickly receded.

24. The elections to the Senate took place on 25 February 2018. Of the 62 senators, 58 are indirectly elected by members of the Commune/Sangkat Councils and the National Assembly (of the remaining, two are appointed by the King and two by the National Assembly). The elections were practically uncontested as CNRP commune and National Assembly seats (approximately 43 per cent of the electorate for the senate elections) had been reallocated. The CPP controlled around 95 per cent of the electorate, and secured all 58 elected seats in the Senate. While the Senate elections are indirect, the result reflects the deprivation of millions of Cambodians of their political rights as a result of the redistribution of seats at the communal level, and may remain so for the next six years.

B. Impact on the rights of specific individuals and groups

(a) Members and supporters of the CNRP

25. Following the Supreme Court decision, reliable information was received of many ex-CNRP members facing increased pressure and intimidation, usually to get them to 'defect' to the CPP. For example, senior ex-CNRP officials in Kampong Chhnang were threatened on 18 November by senior Government and police officials with imprisonment if they refused to join the CPP. Over 50 ex-CNRP officials in Kampong Chhnang province had switched to the CPP by end-November 2017 to hold on to their positions. In another instance, an ex-CNRP leader in north-western Cambodia reported intimidation by a local military commander, accompanied by thirty armed soldiers, after he refused to defect to the CPP. Others reported similar incidences in different provinces.

26. Some refused to defect, including 38-year-old Mr. Chhun Sithy, an ex-CNRP commune councillor in Pailin, who was arrested without warrant on 24 October 2017. According to information received, police questioned him with respect to a three-minute video posted on Facebook where he responded to the 22 October call by the Prime Minister to CNRP members to defect and keep their jobs. In the video, Mr. Sithy apparently doubted the smartness of the Prime Minister in offering money and said that he would not accept

elections passed peacefully with few reported irregularities, setting new benchmarks for transparency in electoral processes in Cambodia. There were nonetheless significant reports of restrictions placed on political parties and the media as well as threats and intimidation prior to the election. The National Assembly adopted a series of amendments to laws affecting political processes in the last year. Amendments made to the Law on Political Parties in March 2017 were reported in the previous report (see A/HRC/36/61, para. 8). These new powers have been invoked.

67. The founder and President of the Khmer Power Party, Sourn Serey Ratha, was detained in August 2017 following a Facebook post criticizing the military's deployment near the border with the Lao People's Democratic Republic. He was convicted of incitement and sentenced to five years' imprisonment. A new President, Soung Sophorn, was swiftly appointed to ensure that the party did not come into conflict with the amended Law on Political Parties. Also in August, Nhek Bun Chhay, President of the Khmer National United Party, was arrested in connection with 10-year-old allegations of drug production. He had previously been a commander in the armed forces and, until June 2017, had held the post of adviser to the Government. The only non-CPP/CNRP commune chief to be elected on 4 June was a member of his party. He was released under judicial supervision in May 2018.

68. In July 2017, the National Assembly introduced the next set of amendments to the Law on Political Parties preventing any political party from associating with or using the voice messages, images, written documents or activities of a person convicted of a felony or misdemeanour. Any party so doing can be banned from political activities for five years, prohibited from involvement in elections or even dissolved.

69. As the Special Rapporteur reported in her oral presentation to the Human Rights Council at its thirty-sixth session, the leader of CNRP, Kem Sokha, was arrested on charges related to comments he had made in 2013 about his grass-roots political strategy to challenge the current Government. He was subsequently charged with conspiracy with a foreign Power, an act implying "fomenting hostilities or acts of aggression against Cambodia"; the foreign Power was allegedly the United States of America. He remains in pretrial detention in Correctional Centre 3. The Special Rapporteur was refused permission to meet with him in March 2018.

70. In October 2017, following the receipt of complaints from FUNCINPEC (National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia) and the Cambodian Youth Party, the Ministry of Interior submitted a request to the Supreme Court, under the amendments to the Law on Political Parties, to dissolve CNRP. At the same time, while the case was being considered, amendments to a range of electoral laws were passed that provided a process for reallocating seats won by a party that had been dissolved.

71. On 16 November 2017, the Supreme Court dissolved CNRP and banned 118 senior members of the opposition from political activity for five years. The Special Rapporteur is concerned that the evidence provided by the Ministry of Interior, and relied upon by the Supreme Court in its decision to dissolve CNRP, was in part the same evidence that is currently before the investigating judge in respect of the charges against Kem Sokha. The Supreme Court's judgment does not contest that evidence and no defence was submitted by CNRP, raising serious concerns as to the basis for the decision to dissolve the party.

72. Many CNRP party members have since fled the country, and members have reported intimidation by the authorities and pressure to "defect" to the ruling CPP.

73. After the party was dissolved, the National Election Committee redistributed the National Assembly seats won by CNRP in 2013. Three parties accepted seats (FUNCINPEC, the Cambodian Nationality Party and the Khmer Economic Development Party); two parties refused (the League for Democracy Party and the Khmer Anti-Poverty Party), and the seats were reallocated to CPP.

74. Commune/*sangkat* positions won by CNRP (over 43 per cent of the total) in the June 2017 election were also reallocated by the Committee in December 2017. CPP gained most of the positions: 4,548 of the 5,007 CNRP councillor positions and all 489 CNRP commune chief positions. Of the remaining commune councillor positions, 240 were given

to FUNCINPEC, 203 to the Khmer National United Party, 10 to the Cambodian Nationality Party and 3 each to the Cambodian Youth Party and the Cambodia Indigenous People Democracy Party. The League for Democracy Party and the Grassroots Democratic Party refused to accept the reallocated seats.

75. In the Senate, two senators lost their seats following the dissolution of CNRP. CNRP did not contest the commune/*sangkat* elections in 2012, as it was formed later by a merger of the Sam Rainsy Party and the Human Rights Party, both of which held Senate seats. Only commune councillors and National Assembly members participate in the indirect election of senators, meaning that CPP was holding around 95 per cent of seats following redistribution. The election for the full Senate was held in February 2018 with CPP winning all 58 elected seats (2 seats are appointed by the King and another 2 seats by the National Assembly).

76. The effect of these amendments to laws and the consequent redistribution of seats is to deprive millions of Cambodians of their right to political participation. For those who voted CNRP in constituencies which CNRP won, the candidates they voted for in the 2013 National Assembly elections and the 2017 commune elections have been replaced by different people representing different political parties, which in turn has had an effect on the election of senators. This situation raises serious concerns about the right to take part in the conduct of political affairs, which envisages the right to be represented through chosen representatives.

77. The Special Rapporteur notes that three members of the National Election Committee left their seats following the dissolution of CNRP as they were members appointed by CNRP (the composition of the Committee was split between CPP and CNRP following the adoption of the "culture of dialogue" resolution in July 2014, with the remaining seat representing civil society). The new appointees, whose nominations appeared to be inconsistent with the provisions of the Law on the National Election Committee, were approved by the newly reconfigured National Assembly in December.

78. Cambodia proclaims itself a multiparty liberal democracy (art. 51 of the Constitution). At the end of an extended period of registration of political parties wishing to contest the July 2018 national election, the National Election Committee had registered 20 political parties, many of them newly formed. The Special Rapporteur was reminded that 25 years ago, the United Nations Transitional Authority in Cambodia oversaw 20 political parties, many newly formed, contesting the first election after the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict were signed in Paris in 1991. Nevertheless, no election can be considered genuine if the main opposition party is barred from taking part and 118 of its senior members are prohibited from standing.

IX. Administration of justice

79. The Special Rapporteur was pleased to learn that the Ministry of Justice has had an increase in its budget and is now making progress on a number of long-discussed initiatives. Some 23,000 cases have now been registered on the electronic criminal court cases database and the Ministry noted in discussions the possibility of developing a central criminal database, thereafter integrating civil cases and rolling out a comprehensive electronic case management system. The Special Rapporteur also welcomes the additional increase in funding for legal aid and the development of a national legal aid policy, and urges the Government to fully develop and adequately resource this policy.

80. The Special Rapporteur remains concerned at inconsistency in the use of evidence in criminal cases. Article 321 of the Criminal Procedure Code is the principal legal provision in this regard; there is no further guidance on evaluating evidence. While she notes the Government's indication that the stipulations in the Criminal Procedure Code are sufficient guidance for judges, practice concerning evidence varies. For example, there have been examples of judges in the Court of Appeal overturning convictions owing to a lack of evidence, but practice is not the same across all cases. As referred to above, the Supreme Court's decision to dissolve CNRP raises serious concerns as to the use of evidence. The Ministry of Justice should consider developing clear guidelines on appropriate standards

and evaluation of evidence. Lessons may be learned from the work of the Extraordinary Chambers in the Courts of Cambodia.

81. In March 2018, the Special Rapporteur took the opportunity to meet with senior court officials. She warmly welcomed the work in the Court of Appeal on strengthening judicial reasoning and the discussion on publishing decisions. Greater transparency in judicial decision-making should lead to greater legal certainty, more consistent decisions on evidence and the application of the law, thereby strengthening public confidence in the judiciary. Publishing decisions and reasoning would also be of benefit to universities and the Royal Academy of Judicial Professions in their important work on educating future legal professionals. The plans to fully train and then deploy Court of Appeal judges to regional courts of appeal are also encouraging. This will make justice more accessible and remove the necessity of so many detainees having to travel to Phnom Penh for appeal hearings.

82. The Special Rapporteur urges the Ministry of Justice to push forward with its local judicial service centres and associated education programme to support the greater use of judicial supervision (rather than pretrial detention) and to complement the planned expansion of alternatives to custodial sentencing.

83. Two cases are ongoing at the Extraordinary Chambers in the Courts of Cambodia. Closing statements in case 002/02, the second against Nuon Chea and Khieu Samphan, concluded on 23 June 2017. Judgment is expected in 2018. Case 003 against Meas Muth reached the stage of final submissions by the co-prosecutors in November 2017. Case 004 against Im Chaem, Ao An and Yim Tith was severed into three separate case files. On 5 September 2017 the investigation in case 004 was closed for the second time.

X. Treaty body reporting and the universal periodic review

84. Cambodia still has a number of periodic reports overdue to the treaty bodies: the third report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the initial report on the International Convention for the Protection of all Persons from Enforced Disappearance; the initial report on the Convention on the Rights of Persons with Disabilities and the combined fifth and sixth reports on the International Covenant on Economic, Social and Cultural Rights. The combined fourth to sixth reports on the Convention on the Rights of the Child was due in May 2018, and the Special Rapporteur understands that it will be submitted shortly. The combined fourteenth to sixteenth reports on the International Convention on the Elimination of All Forms of Racial Discrimination was submitted in March and the sixth report on the Convention on the Elimination of All Forms of Discrimination against Women was submitted in April. All other overdue reports are currently being drafted.

85. The third report on the International Covenant on Civil and Political Rights is due during the next reporting period.

86. The national report for the third cycle of the universal periodic review should be submitted in November 2018 as Cambodia is scheduled to be reviewed by the Human Rights Council working group at its thirty-second session (January/February 2019). The Special Rapporteur encourages the Government to engage in a collaborative effort to consult with a variety of stakeholders during the drafting process, including with civil society organizations, as well as to adopt an implementation plan following the review, and indeed for reporting to treaty bodies. The newly established Inter-Ministerial Working Group directing reporting work on human rights in Cambodia to the United Nations should provide an opportunity to consolidate best practices for collaborative and participatory drafting processes and follow-up through agreed implementation plans.

XI. Communications to the Government

87. Between June 2017 and June 2018, there were a welcome number of responses to communications sent to the Government. During that time 11 communications — 5 urgent

appeals, 2 allegation letters and 4 other letters were communicated to the Government. They were issued by the country mandate and/or other special procedure mechanisms. The Special Rapporteur issued eight press releases. The predominant subjects were political participation and freedom of expression.

88. In addition, on 19 April 2018, the Working Group on Arbitrary Detention determined that the ongoing detention of Kem Sokha was arbitrary (A/HRC/WGAD/2018/9). The Government acknowledged receipt of the communication from the Working Group but has not yet responded to provide its views.

XII. Conclusions

89. The overall human rights situation in Cambodia has suffered over the past year. On one hand, the ongoing economic growth that Cambodia is enjoying has paved the way for improvements in the area of economic and social rights, in particular, social protection, minimum wage and maternity leave. The Government has also submitted its sixth report to the Committee on the Elimination of Discrimination against Women, which will help promote dialogue on gender equality, and its combined fourteenth to sixteenth reports to the Committee on the Elimination of Racial Discrimination. While these are welcome developments, there has been regression in the area of political rights and enjoyment of fundamental freedoms. The dissolution of CNRP and the imprisonment of its President, Kem Sokha, the banning of 118 CNRP officials from political activity for five years and the reallocation of CNRP seats to unelected representatives have seriously strained political rights. Developments in law, policy and practice, including amendment of the Constitution to introduce a lèse-majesté law, have targeted critical and dissenting voices and significantly curtailed fundamental freedoms. These developments are grave. For economic development to be sustainable, the indivisibility of rights dictates that respect for civil and political rights should accompany improvements in economic and social rights.

90. Reflecting on Cambodian history, the Special Rapporteur reiterates that human rights are crucial for durable peace, stability and development. The vision based on the Charter of the United Nations and in the 2030 Agenda for Sustainable Development underlies the Sustainable Development Goals. It is also reflected in Cambodia's Constitution, which states that Cambodia is to be an "oasis of peace" based on a liberal multiparty democratic system guaranteeing human rights and respect of law and progressively developing the nation.

91. Given the dramatic economic development and progress in Cambodia, it is now timely to focus on securing the Sustainable Development Goals and developing action plans with concrete targets to ensure that all Cambodians can equally share the benefits of that development. The Special Rapporteur looks forward to receiving the localization plan for the Goals and to working with the Government, development partners and civil society towards securing those goals. She therefore intends to focus her next report on the human rights aspects of the localization of the Goals.

XIII. Recommendations

92. The Special Rapporteur reiterates her willingness to work with the Government to protect, respect and promote human rights for the benefit of all people in Cambodia. By way of supporting the Government in making tangible progress towards implementing the range of recommendations, and in pursuance of discussions thereon, the following recommendations are highlighted for immediate action. The Government should:

(a) Convene a national conference in 2019, with the participation of civil society organizations, donors and United Nations agencies, to prepare a coordinated plan for the implementation of recommendations from the universal periodic review, treaty bodies and special procedures;

(b) **Finalize and publish the localization plan and policies for achieving measurable success in attaining the Sustainable Development Goals;**

(c) **Simplify the process for granting communal land titles and set out a plan with objectives to do so;**

(d) **Where this is not already the case, ensure that the list of court fees is publicly displayed in Khmer in all courts and that any additional fees that clerks may legitimately charge are also verified and publicly displayed;**

(e) **Ensure that the notices indicating that no payments can be made to prison guards or other staff at prisons are clearly displayed in Khmer at the entrance to all detention centres;**

(f) **Develop a manual on the collection, evaluation, use and storage of evidence to strengthen the administration of justice;**

(g) **Continue and expedite the compilation of key decisions of courts of first instance, appeal courts and the Supreme Court;**

(h) **Provide guidelines from the Supreme Council of the Magistracy to all judges to use the pretrial detention form as a means to encourage reasoned judgments for related decisions, and seek capacity-building support as required;**

(i) **Release all detainees who have been charged and imprisoned without sufficient substantiated evidence and who were arrested due to their political affiliations, human rights work or the expression of their opinions;**

(j) **Remove the ban on the 118 former CNRP members from engaging in political activities and restore the former CNRP commune council seats and chief positions to those elected in June 2017.**

93. **The following recommendations are highlighted for consideration to determine the best way to ensure that law and practice comply with international human rights standards. The Government should:**

(a) **Repeal provisions of the Criminal Code that can be used to restrict the freedoms of expression, assembly and association in order to achieve greater compatibility with international human rights standards, decriminalizing offences such as defamation;**

(b) **Ensure that the final version of the environmental and natural resources code takes into consideration the inputs of civil society and United Nations agencies;**

(c) **Increase efforts to systematically record and report legal cases with a summary of the reasoning and provide comprehensive training to the judiciary on the contents of the manual on evidence, once finalized;**

(d) **Increase efforts to minimize pretrial detention and the use of non-custodial sentencing in appropriate cases, supporting this with public awareness-raising and information campaigns;**

(e) **Introduce practical guidelines on alternative sentencing to enforce the Law on Juvenile Justice and relevant provisions of the Criminal Code;**

(f) **Increase efforts to publish the judicial decisions of all courts;**

(g) **Provide, through the Ministry of Economy and Finance, sufficient budgetary allocations for the communal land titling process as well as for legal aid;**

(h) **Use interim measures for indigenous communities under article 23 (2) of the Land Law 2001 with a view to halting all forms of land transactions until the community concerned has received a final decision on its communal land title claim;**

(i) **Ensure that centres housing users of drugs and other substances as well as centres supporting persons with psychosocial and other disabilities are adequately resourced and meet relevant international standards;**

(j) **Undertake a review of the national anti-drug programme, including from a human rights perspective;**

(k) **Work towards a rolling timetable for ensuring that reporting requirements under the United Nations treaties are met in a timely manner.**

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Report of the Special Rapporteur on the situation of human rights in Cambodia*

This addendum to the annual report (A/HRC/39/73) focuses on human rights issues leading up to and around the 2018 National Assembly elections. During the interactive dialogue at the Human Rights Council's thirty-sixth session, many States requested the Special Rapporteur pay particular attention to the human rights impact of the political situation ahead of the national elections. As the annual report to the Council was submitted before the election held on 29 July 2018, this addendum seeks to analyse the human rights situation in Cambodia during the electoral period, as well as the impact of the elections thereon.

This addendum includes information up to 15 August 2018, when the final results were announced. Many of the concerns related to legislation and individual cases have previously been raised with the Royal Government of Cambodia in communications. A draft of this addendum was shared with the Government on 20 August.

This addendum includes information on specific cases and alleged violations of human rights received by the Special Rapporteur. Some names and other personal identifying details have been withheld where divulging them may place the source at risk: details have only been included with the explicit informed oral consent of the source. Only information considered reliable and credible has been included. Where possible, information received has been corroborated by other sources[1]. Social media and online news sources have also been included as their use is particularly widespread in the Cambodian context and such media are commonly used to communicate statements by Cambodian authorities.

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I. The right to participation in international human rights law

1. Cambodia ratified the International Covenant on Civil and Political Rights (ICCPR) on 26 May 1992 and its third report is due to be submitted to the Human Rights Committee on 2 April 2019. Article 25 of the ICCPR recognizes and protects the right of every citizen – without discrimination or unreasonable restrictions – to take part in the conduct of public affairs; to vote and to be elected; and to have equal access to public services in the country. This lies at the core of democratic government based on the consent of the people[1] and is recognized in other international instruments.[2] It is an integral part of the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 16.[3]

2. While article 25 forms the core of 'political rights' in international human rights law, it cannot be viewed in a vacuum. The realization of the right requires an enabling environment where other rights are respected. These include the rights to equality and non-discrimination and the right to education as well as the fundamental freedoms of opinion and expression, peaceful assembly, and association.[4]

3. Elections are a key feature of any democratic system. Article 25(b) ICCPR focusses on the rights to vote and to be elected in genuine periodic elections, by universal and equal suffrage and by secret ballot. No particular electoral system, that is a matter of national law and sovereignty, is prescribed but any election must guarantee the free expression of the will of the electors.[5] While States may lay down conditions or restrictions, these must be based on objective and reasonable criteria.[6] For example, the Human Rights Committee has pointed out that reasonable restrictions include a minimum age limit, but any restrictions on physical disability, or literacy, educational or property requirements would be unreasonable.[7] As only citizens are covered by Article 25, it follows that the provision of citizenship should not in itself be discriminatory.[8]

4. The notion of free expression of the elector's will is not limited to the time of casting the vote alone. For any election to be genuine, and guarantee the will of the voters, it must be conducted in a setting where human rights are enjoyed by all, particularly with respect to the rights to life, physical and mental integrity, liberty, security and privacy. Furthermore, to ensure a level playing field, freedom of opinion and expression, peaceful assembly, and association must be ensured. The Human Rights Committee has also noted the importance of "genuine competition" and called for a culture of political pluralism and pluralistic political debate.[9]

5. Elections must be conducted freely and fairly, with eligible voters free to vote for any candidate, without undue influence or coercion of any kind.[10] Where voting is not compulsory, this also includes abstaining from voting, or boycotting the election.[11] The free communication of information between citizens, candidates and elected representation is essential, implying an independent media operating without censorship or restraint.[12] Human rights defenders and an active civil society are often conducive to a genuine election, particularly as they also assist voters in forming independent opinions, often challenging those in power. Other necessary elements include an independent electoral authority – to ensure that the election is impartial and in accordance with domestic laws,

[1] CCPR General Comment no. 25, CCPR/C/Rev.1/Add.7.
[2] See e.g. CEDAW, articles 7 and 8; CRPD, articles 4(3), 29 and 33(3).
[3] See e.g. Targets 16.7 and 16.10 of SDG 16.
[4] CCPR General Comment no.34, CCPR/C/GC/34, para 4 and 20.
[5] CCPR/C/Rev.1/Add.7, para 21.
[6] CCPR/C/Rev.1/Add.7, para 4.
[7] CCPR/C/Rev.1/Add.7, para 10.
[8] CCPR/C/Rev.1/Add.7, para 3.
[9] For example, see CCPR/C/UZB/CO/4 (2015), Para 26.
[10] CCPR/C/Rev.1/Add.7, para 19.
[11] General Comment no. 34, CCPR/C/GC/34, para 28.
[12] CCPR/C/Rev.1/Add.7, para 25 ; see also E/CN.4/1998/40, para 24.

compatible with international human rights law – as well as independent scrutiny and judicial review.[13]

II. Elections from 1993 to 2013

6. Following the Paris peace agreements, Cambodia has held five elections for the National Assembly prior to the July 2018 elections (see graph 1, page 22). There have also been indirect elections to the Senate – the upper house of Parliament, as well as local elections for commune and district officials. While there has tended to be an overall improvement in the conduct of elections, the work of previous special procedure mandate holders demonstrates that many of their human rights concerns relating to elections and political participation unfortunately have not changed.

7. In particular, my predecessors have consistently noted various concerns around freedom of expression and intimidation of political activists and voters.[14] One highlighted that such restrictions and intimidation resulted in a chilling effect on freedom of expression in Cambodia, with many Cambodians exercising self-censorship in what they say and write, fearing arrest and detention if they express views critical of those in power.[15] In relation to the 2008 elections, moreover, OHCHR found that there was "an apparent campaign of pressure, threats, intimidation and inducements directed against political activists at every level in an attempt to persuade them to change parties."[16] The statement also noted deeply entrenched inequities among political parties in their access to, and control of, the media. In the 2013 elections, though largely peaceful at the pre-electoral stage, the Special Rapporteur noted that a campaign of intimidation and pressure still prevailed, particularly in rural areas.[17] The inability or unwillingness of the judiciary to respond appropriately to freedom of expression issues was also noted repeatedly,[18] raising concerns of politicized prosecutions[19] and independence of judiciary.[20]

8. Other recurring concerns raised by my predecessors have included the use of State resources, including the time of Government employees, vehicles and material and military, by political parties during their campaigning;[21] shortcomings of the National Assembly including protecting freedom of speech of parliamentarians,[22] and insufficient opportunity for opposition parliamentarians to effectively debate bills.[23] My predecessor also highlighted the practice of defamation and disinformation charges filed by or on behalf of the Government against members of opposition parties and other critics of public policies or practices.[24] Concerns around criminalizing insult and defamation have been raised as far back as 1994-5.[25] This remains problematic in terms of Article 19 ICCPR.[26]

9. Another significant concern which has been raised repeatedly is the discrimination against ethnic Vietnamese. In 1998, the then Special Representative of the Secretary-General documented concerns not only with registration – including that many were given ad-hoc language tests despite producing identification – but also discriminatory and provocative speech by opposition parties and politicians. The report noted that some

[13] CCPR/C/Rev.1/Add.7, para 20.
[14] A/50/681, Para 47; A/HRC/21/63, paras 33-34; A/HRC/18/46, paras 18-19.
[15] A/HRC/21/63 – paras 31, 55-57.
[16] https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/news/WebDOCs/2008/Statement_29072008E.pdf.
[17] A/HRC/24/36, para 35.
[18] A/HRC/18/46, 18-19; A/HRC/21/63, para 34.
[19] A/HRC/18/46, para 23 and A/HRC/24/36, para 44-45.
[20] A/HRC/15/46.
[21] A/HRC/21/63, para 52; A/HRC/24/36, para 38.
[22] A/HRC/18/46.
[23] A/HRC/15/46 Para 15; A/HRC/18/46.
[24] A/HRC/12/40, para 19.
[25] E/CN.4/1995/87, para 55 and A/50/681, para 45.
[26] CCPR/C/KHM/CO/2, para 21. Also CCPR General Comment n .34, CCPR/C/GC/34, para 38 and 47.

opposition politicians campaigned on a theme of ethnic hatred.[27] Similar racist and anti-Vietnamese rhetoric was used by representatives of several political parties during the 2003 election campaign. The Special Representative of the Secretary-General's 2003 report also noted harassment of Cambodians of Vietnamese descent on polling day and after.[28] Similar concerns were also noted with respect to the 2013 election.[29]

III. The 2013 national election and its aftermath

10. The 2013 election resulted in a win for the Cambodian People's Party (CPP) with 68 seats (48.83 per cent of popular vote) while the main opposition party, the then newly constituted Cambodia National Rescue Party (CNRP),[30] won all other 55 seats (44.46 per cent). There were however credible allegations of "massive electoral irregularities".[31] My predecessor expressed disappointment at the failure of the Government and the National Election Committee (NEC) "to facilitate [a] prompt, impartial, transparent, credible and thorough investigation of the alleged irregularities."[32] Nonetheless, a key shift in this election was the emerging evidence that an opposition party could seriously challenge the ruling party in Cambodia through peaceful means and even have the potential, eventually, to gain power.

11. The CNRP refused to take its seats in the National Assembly in protest at the claimed irregularities. These allegations, consistent with analyses by election observation groups and civil society groups, led to significant protests across the country.[33] One bystander was shot dead on 15 September[34] and another on 12 November, when security forces fired live ammunition after clashes with protestors in Phnom Penh.[35] The tension rose by the end of the year, when thousands of protesting workers joined the opposition protests and excessive use of force by security forces killed at least five demonstrators on 3 January 2014.[36] The next day, the Government banned all demonstrations, marches or rallies on public order and security grounds, including from Freedom Park: Phnom Penh's designated public demonstration site.[37]

12. A political agreement was reached between the Government and the CNRP in July 2014, which ended the CNRP demand for an independent investigation into the election and in return the Government committed to reform. As part of this 'culture of dialogue', the CNRP took up their seats in the National Assembly in August 2014. Subsequently, the NEC itself was reconstituted, with equal representation of both parties holding seats in the National Assembly and one independent member.[38]

13. Unfortunately, this culture of dialogue between the two main political parties did not last long. The political situation rapidly deteriorated. In July 2015, 11 CNRP members and supporters were convicted, and another three arrested in August, for leading or participating

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[27] A/53/400, paras 58-60.

[28] A/58/317, para 22.

[29] A/HRC/27/70, paras 52-3.

[30] Formed after the 2012 commune elections from a merger between the then Sam Rainsy Party and the then Human Rights Party.

[31] A/HRC/24/36 para 39-40.

[32] Oral statement at the HRC, September 2013, at https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/news/WebDOCs/2013/SR_Cambodia_statement_ENG.pdf.

[33] A/HRC/27/70, para 10; KHM 2/2013, https://spdb.ohchr.org/hrdb/24th/public_-_UA_Cambodia_27.09.13_(2.2013)_Pro.pdf.

[34] Oral statement at the HRC, Sep 2013, see FN 33; KHM 1/2013, https://spdb.ohchr.org/hrdb/24th/Public_-_UA_Cambodia_01.10.13_(1.2013)_Pro.pdf.

[35] https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13995&LangID=E.

[36] A/HRC/27/70, para 13; KHM 2/2014, https://spdb.ohchr.org/hrdb/25th/Public_-_UA_Cambodia_28.02.14_(2.2014)_Pro.pdf.

[37] KHM 1/2014, https://spdb.ohchr.org/hrdb/25th/public_-_AL_Cambodia_17.02.14_(1.2014).pdf.

[38] Article 151, Constitution of Cambodia.

in an "insurrection" following a failed attempt a year before to reopen Phnom Penh's Freedom Park for demonstrations, in a protest that turned violent and left several security men injured.[39] Still in August, an opposition Senator was arrested without his parliamentary immunity being formally lifted.[40] In October 2015, two CNRP members of parliament were violently assaulted following what appeared to have been an organised protest of around 2,000 pro-government protestors outside the gate of the National Assembly: three men from the Prime Minister's bodyguard unit were subsequently convicted for the attack.[41] In November 2015, following the resurrection of historic charges and the issuance of an arrest warrant against him, Sam Rainsy remained abroad in self-imposed exile.[42] (A year later, he was effectively banned from coming back to his own country, following administrative instructions that were only lifted by the government shortly prior to the commune elections).[43] A related development was the introduction of the Law on Associations and Non-Governmental Organizations (LANGO), frequently criticized for its restriction on the work of independent bodies acting on human rights issues.[44]

14. More CNRP members had charges brought against them in 2016, including members of Parliament whose parliamentary immunity was most often not formally lifted. Charges of defamation or attempts to bribe a witness were lodged against CNRP leader Kem Sokha and members of civil society.[45] He refused to appear for questioning and was found guilty in September 2016.[46] Although he subsequently received a royal pardon and left his self-imposed house arrest, one CNRP member of the National Assembly and two pro-CNRP Senators were sentenced to 2.5 years (incitement), 7 years (forgery and incitement) and 18 months (defamation and incitement) respectively, for comments made on social media.[47] Um Sam An, the member of the National Assembly, remains in detention as of writing.

15. In March 2017, Parliament enacted amendments to the Law on Political Parties, following which anyone convicted to an unsuspended prison term, was prohibited from holding political office, while political parties could be dissolved for being secessionist or subversive.[48] This forced Sam Rainsy to step down as President of CNRP and several others to resign from the Steering Committee. OHCHR has raised concern about provisions of this law being inconsistent with Cambodia's international law obligations.[49] The law was further amended in July 2017 preventing any political party from associating with or using voice messages, images, written documents or activities of a person convicted of any crime. Penalties for doing so included a ban from political activities for up to five years, prohibition from involvement in elections or even dissolution of the party concerned.[50]

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[39] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23071.

[40] KHM 7/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_UA_Cambodia_21.12.15_(7.2015).pdf.

[41] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=16795; KHM 6/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_AL_Cambodia_03.12.15_(6.2015).pdf.

[42] KHM 7/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_UA_Cambodia_21.12.15_(7.2015).pdf.

[43] KHM 7/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22853.

[44] A/HRC/33/62, Para 29; KHM 2/2015, https://spdb.ohchr.org/hrdb/30th/Public_-_OL_Cambodia_08.05.15_(2.2015).pdf; https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16240&LangID=E.

[45] A/HRC/33/62, para 7; KHM 3/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19826.

[46] A/HRC/36/32, para 9.

[47] A/HRC/36/61, para 7.

[48] https://cambodia.ohchr.org/sites/default/files/A~alysis%20on%20the%20Amended%20Law%20on%20Political%20Parties%2028%2003%202017%20FINAL%20no%20TC.pdf.

[49] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22174.

[50] A/HRC/39/73, para 68.

570,000 USD much less 570, 000 Riel. He was charged with incitement to commit felony and insulting public officials, and eventually sentenced to one-year imprisonment and an 8 million Riel fine (USD2,000) on 23 March 2018.

27. Several ex-CNRP members – reportedly including half of the banned 118 senior members – fled the country before and following the Supreme Court decision, fearing arrest. 34-year-old Ms. Sour Sem, an ex-CNRP commune councillor from Pailin, fled abroad on 30 November 2017 after receiving a local court summons for alleged conspiracy of treason and espionage committed between June and October 2017. According to information received, she had been under pressure throughout November from officials at various levels of the administration to defect to the CPP and had even refused a formal request in writing received on 17 November 2017. An arrest warrant was issued against her on 29 December 2017, a copy which was shared with the Special Rapporteur.

28. Similarly, Oun Sreang, an ex-CNRP Province Executive Committee member in Oddar Meanchey, fled to Thailand on 18 November 2017 after a local court summoned him on 8 November. The summons related to his claim in August 2016 that the local authority was behind the shooting of a CNRP signboard – two years later, he was being investigated for public defamation and incitement to commit felony. The attempts to convince him to defect continued even after he fled. In late November, he reported contact on Facebook by an ex-CNRP commune chief, who had changed to CPP, who told him that if he came back and joined the CPP, the complaints could be resolved.

29. From September to November 2017, approximately 220 ex-CNRP leaders and members are reported to have fled to Thailand, where most are seeking refugee status. A further 50-60 members are reported to be living near the Thai-Cambodian border. The asylum seekers have been explicitly warned by Thai authorities that no political activity is permitted. Many of them have claimed surveillance and intimidation by Cambodian agents and Thai authorities, and fear being returned to Cambodia.

30. This fear of being forcibly returned is partly prompted by the case of Ms. Sam Sokha from Kampong Speu. In April 2017, she had posted a video on Facebook showing herself throwing a shoe at a CPP signboard featuring images of the Prime Minister and the National Assembly President and saying that they were destroying the nation. She was charged with insulting public officials and incitement to discriminate, and convicted in absentia in January 2018 to two years imprisonment and a fine of 5 million Riel (USD 1,250). Despite being accorded refugee status by UNHCR, she was extradited by Thai authorities on 8 February following a request by the Cambodian government. In addition to serving her sentence – for mere exercise of her right to freedom of expression – she is now undergoing another trial on allegations of incitement to discrimination in connection with statements allegedly made in Thailand.

31. Ex-CNRP members who remain in Cambodia report living in fear, unable to freely express their political opinions. For example, in May 2018, former vice-president of CNRP Pol Hom told a reporter that he wants to express his opinion on the current political issues but is forced to shut his mouth.[60] Ex-CNRP members and supporters also report continuing harassment and intimidation. In one such instance Ms. Sin Chanpeouroseth, an ex-CNRP commune chief in Ochar, Battambang, who now runs a restaurant, received online threats in January 2018 by a CPP lawmaker who claimed that the restaurant was a front for banned CNRP activity. She responded by putting a banner outside the shop saying that it was open to all, except rebels. However, the Battambang municipality told her to take it down. According to information received, she continues to receive occasional threats, including a late-night visit by unidentified men who verbally abused her in the week prior to the national election.

32. A number of other complaints have been received, including ex-CNRP supporters or their families being threatened or followed by apparent police officers. For example, the family of one leader in Oddar Meanchey refused the village chief's request to join the CPP.

[60] https://www.phnompenhpost.com/national-politics/ex-cnrp-deputy-pol-ham-breaks-silence-talks-safety-concerns.

Over the next two weeks, they received three midnight visits by unidentified persons who destroyed kitchen utensils and other property in their yard or defecated there. Not receiving much support from the police, and facing increasing threats from the midnight visitors, the family moved to another province in mid-July 2018.

33. Kem Sokha and Sam Rainsy have been variously summoned, accused or convicted in a range of cases, mostly on defamation and incitement charges.[61] On 29 January 2018, Sam Rainsy announced the new Cambodia National Rescue Movement. Within days, the Ministry of Interior instituted proceedings against Sam Rainsy and other leaders on grounds of incitement and creating chaos to overthrow the Government. At least three criminal cases have been filed against Sam Rainsy in the Phnom Penh courts between December 2017 and June 2018, relating to statements on Facebook. Mr Rainsy was also convicted in absentia in previous pending cases: on 6 March 2018 an Appeal court upheld the lower court verdict on public defamation with a 10 million Riel fine (USD 2,500) and 4 billion Riel (USD 1 million) compensation payable to the Prime Minister; on 26 February 2018 another court had ruled that his immovable property in Cambodia be confiscated in relation to claims from defamation cases brought by the Prime Minister and National Assembly President. Other criminal proceedings remain ongoing.

34. The restrictions that followed the 2017 local elections were not limited to the political parties alone, but extended to independent media, civil society groups and individuals who were deemed to represent a threat to the Government. In response to this, the spokespersons of the UN High Commissioner for Human Rights[62] and the UN Secretary General[63] raised concerns in August and December respectively.

(b) Civil society and human rights defenders

35. Even prior to the local elections, the atmosphere for dissent in Cambodia had been deteriorating, particularly with the arbitrary detention of the 'ADHOC 5' (four staff members of the Cambodian Human Rights and Development Association and a former staffer who had moved to a senior position in the NEC) in April 2016,[64] and the July 2016 murder of activist and analyst Kem Ley.[65] Another analyst – Kim Sok – was arrested and eventually sentenced to 18 months in prison for defamation and incitement pursuant to claiming that the CPP was responsible for the murder. Civil Society groups regularly faced harassment and intimidation, including many involved in the "black Monday" campaign highlighting the arrest of the 'ADHOC 5'.[66]

36. During the 2017 local elections, a group of over 40 organizations and associations joined together as the 'Situation Room' to monitor the pre-election environment as well as polling day. In the weeks following the election, the Prime Minister called for an investigation into the Situation Room. Following that, the two election-focused organisations leading the group – Committee for Free and Fair Elections in Cambodia (COMFREL) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) – were notified that the Situation Room was not appropriately registered under the LANGO. In August 2017, the Special Rapporteur discussed with relevant government officials her view that as it was not an NGO, but rather a group of

[61] A/HRC/36/32, para 8.

[62] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=21996.

[63] https://www.voacambodia.com/a/un-secretary-general-concerned-by-deteriorating-democratic-space-in-cambodia/4168302.html.

[64] KHM 3/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19826; KHM 6/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22837; KHM 1/2017, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23142.

[65] A/HRC/36/32, para 13; KHM 4/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3255.

[66] A/HRC/36/61, section IV.

registered NGOs pooling resources and acting together, the Situation Room had no distinct obligation under the LANGO.[67]

37. On 23 August, the National Democratic Institute (NDI) office in Cambodia became the first NGO shut down using the provisions of LANGO. While this was ostensibly due to non-registration, Government officials had repeatedly claimed that NDI had colluded with CNRP. On 31 October, the Federation of Cambodian Intellectuals and Students was temporarily suspended for 60 days based on infringement of LANGO's requirement of political neutrality, after their Director called, in an interview, for people to participate in a protest against CNRP's proposed dissolution.[68]

38. In late November, the Cambodian Center for Human Rights (CCHR) – a NGO initially founded by Kem Sokha in 2002 – was also investigated following a speech made by the Prime Minister in which he accused CCHR of being linked with the planned 'color revolution'.[69] Although CCHR was allowed to continue, a step in the right direction,[70] the threat to one of the most prominent human rights NGOs in the country appears to have contributed to a chilling effect, resulting in self-censorship by many organisations in Cambodia – all the more so as it followed administrative measures taken against others. In September, the Government had suspended the organization Equitable Cambodia for 30 days, and deregistered the environmental NGO Mother Nature. Two of its members were also arrested relating to filming suspected illegal sand-dredging activities.[71]

39. In early October, the Ministry of Interior issued an administrative instruction that went beyond the terms of LANGO, requiring NGOs and other associations to notify local authorities three days in advance of all activities.[72] This has directly affected day-to-day activities, particularly due to an increased police presence before and during activities or events. Not only did OHCHR note an increased number of reports of intimidation of civil society organizations, and resulting fear among their staff,[73] but its own activities were also affected by local authorities' application of the instruction.

(c) Media

40. In August 2017, the Government revoked or suspended the licences of at least 19 independent radio stations emitting across the country: most carrying programmes by CNRP, Voice of Democracy, Radio Free Asia (RFA) and Voice of America. The RFA office in Phnom Penh subsequently closed over licensing/ taxation issues. The Cambodia Daily – an independent English language daily newspaper – was also forced to close after receiving a tax-bill of some USD6.3 million.[74] Their new website, operated from abroad, is currently blocked by internet service providers in Cambodia.[75]

41. One of the last remaining independent media voices – the Phnom Penh Post – received tax demands of USD3.9 million. These were reportedly settled as part of the sale of the newspaper to a Malaysian investor in May 2018. According to information received, the Malaysian investor's directorship of the newspaper ended in early July and he has been replaced by the newly appointed CEO, a member of a CPP district working group. Two days after the initial sale, the Editor-in-Chief was fired following a dispute with the new owner over an article carried by the newspaper about the sale and possible links between

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[67] End of Mission Statement, 18 August 2017, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22046&LangID=E.

[68] https://www.rfa.org/khmer/news/politics/A-youth-ngo-call-on-people-to-protest-against-ressolving-cnrp-10272017030538.html.

[69] https://cchrcambodia.org/media/files/press_release/679_212pcrifappafcthe_en.pdf.

[70] http://cambodia.ohchr.org/en/news/cambodia-un-special-rapporteur-calls-restoration-democracy-and-vibrant-civil-society.

[71] A/HRC/37/64, para 8. They were subsequently convicted and received one-year prison sentences, with seven months suspended.

[72] A/HRC/39/73, para 7.

[73] A/HRC/37/64, para 9.

[74] A/HRC/39/73, para 64; KHM 4/2017, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23326.

[75] https://www.cambodiadaily.com.

the new owner and the ruling party in Cambodia. More than a dozen national and international staff and reporters have resigned over concerns of editorial interference.

42. In September 2017, an Information Ministry spokesperson had threatened to jail RFA reporters if they continued to work in Cambodia.[76] Two months later, two former RFA reporters, Oun Chhin and Yeang Sothearin, were detained on grounds that they were sending news reports to RFA offices abroad. The men were eventually charged with espionage and remain in prison awaiting trial. In October 2017, two former Cambodia Daily journalists were charged with incitement to commit a felony over election-related coverage in May.

(d) Individual dissenters

43. There has also been continuing surveillance and repression of online activity critical of the Government.[77] A particular feature has been detention and trial of those deemed to have insulted the Prime Minister. For example, a 29-year-old man was arrested by armed military police officials in Kampong Cham in February 2018 after he reportedly called the government "authoritarian" on Facebook. Similarly, a 34-year-old migrant worker was arrested in Banteay Meanchey in March 2018 over alleged insults of the Prime Minister on Facebook. Ms. Hin Vansreypov was convicted in January 2018 to one-year imprisonment and a fine of one million Riel for incitement for making Facebook posts linking the Prime Minister with the murder of Kem Ley. The Special Rapporteur has received information of many such cases. Common features of the cases include arrests without warrant and charges of public insult/ defamation, sometimes with an additional charge of incitement.

44. As the Human Rights Committee has noted, "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".[78] All public figures, including such as heads of state and government, are legitimately subject to criticism and political opposition. By the very nature of their role, public officials should withstand more extensive public criticism than ordinary citizens.

45. In March 2018 'Lèse Majesté' provisions were introduced in Cambodian law.[79] Calls by the CNRP to the King to intervene had been a frequent feature of the post 2013 elections political turmoil. His role was similarly invoked after the dissolution to the CNRP. With the new provisions, any speeches, gestures, writings, paintings or items that "affect the dignity" of the monarch are punishable by up to five years in prison and fines of up to 10 million Riel (USD 2,500). Organizations found guilty could be dissolved, placed under judicial supervision, banned from carrying out activities, closed down, or have their funds and property confiscated. Such provisions are incompatible with Cambodia's obligations under international human rights law, as they criminalize the legitimate exercise of freedom of speech.[80]

46. At least three persons have reportedly been arrested under these new provisions. In addition, Sam Rainsy was summoned by a Phnom Penh court in June 2018 after his Facebook post claiming that a letter written by the King calling on people to vote on polling day was either fake or issued under duress.[81]

47. Charges of incitement are also commonly used for offline activity deemed critical of the Government. In mid-November 2017, a 47-year-old farmer from Prey Veng was detained for distributing leaflets in Phnom Penh against the dissolution of the CNRP.

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[76] https://www.phnompenhpost.com/national/official-warns-ex-rfa-staffers-about-continuing-work-cambodia; https://www.voacambodia.com/a/cambodia-threatens-radio-free-asia-journalists-with-arrest/4035393.html.

[77] The same rights that people have offline must be protected online, including the right to privacy. General Assembly resolution A/RES/68/167 para 3. See also A/HRC/RES/38/7, para 1.

[78] CCPR/C/GC/34, Para 38.

[79] KHM 1/2018, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23660.

[80] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22674&LangID=E.

[81] https://www.khmertimeskh.com/50502935/sam-rainsy-summoned-for-insulting-the-king/

Another 44-year-old man was detained a few days earlier in Phnom Penh for distributing 'inciting' anti-Government and anti-Prime Minister pamphlets.

(e) Demonstrators

48. The January 2014 restrictions on freedom of assembly have not been officially lifted. My predecessor had regretted the failure of Cambodian authorities to understand that freedom of expression and peaceful protest was an inherent part of the democratisation process, which should be facilitated and not hindered.[82] The Special Rapporteur has previously noted that security forces commonly reject notification of assemblies and use roadblocks to prevent and block peaceful assemblies.[83] Such patterns appear to continue, particularly given the tension around CNRP's dissolution and fears of a 'color revolution'.

49. There is reliable information of instances of the police obstructing attempts at demonstrations or gatherings supporting CNRP. The authorities banned all assembly and protest on the day of Kem Sokha's trial on 31 October 2017 and all roads leading to the Supreme Court were blocked. In another instance, police in Koh Kong blocked a local vendor from going to Phnom Penh, to prevent him attending a demonstration supporting CNRP on 16 November 2017. Similarly, an ex-CNRP commune council member was summoned for questioning at police station in Battambang in February 2018 after he participated in a friends' charity event in the village: police accused him of organising a gathering without informing local authorities and claimed he was trying to create a movement to overthrow the government.

50. On 27 March, when Kem Sokha was due to appear at the Appeals Court for a hearing, security forces blocked and barricaded nearby streets to keep protestors away. Some ex-CNRP supporters were peacefully gathered near the barricade, and one of them drew chalk symbols on the street. A district security official slapped him, and the peaceful demonstration was dispersed. Concerns of 'color revolution' have meant that any political activity challenging the state remains under threat. On 27 October 2017, five members of the Khmer National Liberation Front (KNLF) were detained by police in Phnom Penh in connection with their plan to distribute leaflets calling on people to protest against the Government during the annual water festival. Even pro-CNRP Cambodian migrant workers protesting in the Republic of Korea were threatened by the Cambodian Ambassador with the risk of legal action on their return home.[84]

51. Information was also received of non-political demonstrations being obstructed in various ways. On 25 September 2017, the Cambodian Independent Teachers' Association notified the Phnom Penh municipality of their intent to gather 250 persons near Wat Phnom on 5 October 2017 – Teachers' Day – and march to the Ministry of Education and the Cabinet of the Prime Minister to submit petitions. A day before the event, they were informed that it was not permitted citing public safety, security and public order. Similarly, the Cambodian Labor Confederation's notification to mark Labour Day in 2018 with a march of about 2,000 workers was disallowed by the Phnom Penh municipality. They were only permitted to conduct a static event.

V. National Election 2018

52. The dissolution of the CNRP and the ban of 118 senior political actors from political activity last November raised serious questions about whether the 2018 national assembly elections could have been genuine.[85] Certain aspects of the run-up to the election are additional cause for concern, in particular the response to the calls for a boycott in a situation where voting is not compulsory, as well as reports of intimidation of voters and civil society organizations and controls of the media.

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[82] Oral statement at the HRC, Sep. 2013, cf. FN 33.

[83] A/HRC/36/61, para 46.

[84] https://bit.ly/2vNpYxl.

[85] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23009&LangID=E; https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22406.

A. Reaction to the call for a boycott

53. On 8 April 2018, Sam Rainsy shared on his Facebook page, a video of an interview with RFA where he called on Cambodians who believed in democracy to boycott the 29 July 2018 elections if the CNRP was not allowed to participate.[86] He also called on national and international observers to refrain from 'observing' the elections. He repeated these calls.

54. On 4 May, the Prime Minister referred to boycott appeals as illegal, violating Article 142 of the Law on Members of National Assembly Election (LEMNA).[87] Similar statements were made by NEC leadership, including the spokesperson who linked boycott calls with incitement and creating unrest.[88]

55. On 2 May, following the release by Sam Rainsy of a leaflet online calling for a boycott, the Deputy Secretary General of NEC reiterated that not only would action be taken against Sam Rainsy, but also anybody who distributed the leaflet, whether in person or online.[89] After the Prime Minister warned against the sharing of the leaflet, on 7 May a spokesperson from the Ministry of Interior added that they would also target the printing houses where such leaflets were printed.[90]

56. On 8 May, the NEC Chair wrote to the Ministry of Interior asking for legal action on grounds that the boycott appeal was affecting public order and national security by obstructing eligible voters from casting their ballot, and causing confusion leading to the loss of trust in election.[91] The Deputy Prime Minister equated the appeals for a boycott with incitement or preventing citizens from going to vote as illegal acts.[92] Similarly, the Secretary General of the NEC told reporters that the campaign against the election was a crime.[93]

57. It is true that actions positively preventing eligible voters from voting is contrary to Cambodian law and violates international human rights. However, calls for boycotts of non-compulsory elections are permitted by international human rights law, as a form of protected expression. Although the right to freedom of expression can be restricted in certain circumstances, the Human Rights Committee has explicitly clarified that restrictions on calls for boycott of a non-compulsory vote are inconsistent with the right to freedom of expression as such restrictions impede political debate.[94] Encouraging voters to boycott an election should be distinguished from intimidation and coercion, and expressing one's intention not to vote does not affect the possibility of voters to freely decide whether or not to participate in a particular election.[95]

B. Intimidation and harassment of voters

58. The Special Rapporteur is concerned about reports of actions by Cambodian authorities affecting individual voters, particularly those considering abstaining from

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[86] https://www.facebook.com/ramsy.sam.5/videos/1790133781043347/?t=19.

[87] Facebook post on file, https://www.khmertimeskh.com/50486675/pm-call-for-election-boycott-illegal/.

[88] https://www.khmertimeskh.com/50303075/ramsy-wants-election-boycott-while-hun-sen-touts-peace/.

[89] https://www.phnompenhpost.com/national/election-body-threatens-legal-action-over-sam-rainsys-boycott-leaflets.

[90] https://www.phnompenhpost.com/national/hun-sen-warns-dispersing-election-boycott-leaflet.

[91] Letter no 474 (on file), https://www.khmertimeskh.com/50490768/nec-asks-interior-ministry-to-take-action-against-anyone-calling-for-a-poll-boycott/, https://khmer.voanews.com/a/cambodia-election-body-files-complaint-against-election-boycott-campaigners/4398605.html.

[92] https://www.rfa.org/english/news/cambodia/threats-05242018171039.html, https://www.phnompenhpost.com/national/interiors-sar-kheng-seeks-punish-those-calling-election-boycott.

[93] http://www.dailymail.co.uk/wires/afp/article-5961949/Cambodia-calls-campaign-boycott-election-crime.html.

[94] CCPR/C/GC/34, para 28.

[95] CCPR/C/81/D/927/2000, para 7.3.

voting. For example, the Governor of Ratanakkiri called upon provincial authorities to take action against individuals who incited people to boycott the election, linking this to maintenance of security and public order.[96] The Deputy Commissioner of National Police, also a member of CPP's central committee, instructed all members of the CPP to monitor their communities and report people telling others not to vote.[97] Media reports also quote village level officials as being under instruction to monitor voters in the village and ensure that they vote.[98]

59. Information from individual voters also suggested intimidation. For example, on 8 July 2018, Mr. Oum Savan, a teacher at Kampong Chhnang's Trapaignchan Secondary School and a former second deputy chief of Tnuk True commune, was reportedly detained on grounds of inciting people not to vote. A letter by some villagers alleged that Mr. Savan told 2 to 3 persons that they did not need to go to vote on polling day, but could stay at home. Even if they went to vote, no one could see them inside the polling booth and it was up to them if they wanted to mark the ballot or not. Media reports quoted the Kampong Chhnang Provincial Police Commissioner saying that Mr. Savan was released on 9 July, after he had promised to stop such activities.[99] Mr. Savan denies all allegations and claims that he merely said he would not go to vote on polling day.

60. In another instance in May, Mr. Kung Raiya, a 27-year student and former President of the Cambodia Student Network, who previously served an 18-month prison term for a Facebook post in 2015-2017,[100] posted messages on Facebook stating that he would absolutely not go to vote if he did not like any of the parties contesting the election.[101] He stated that going to vote or not is the right of every citizen, and that no person or political party can coerce or obstruct anyone from deciding whether to go to vote or not. He highlighted that there was no law punishing voters who do not vote and called on people not to be afraid to express their opinion. Although a resident of Phnom Penh, he was at his wife's family home in Siem Reap at the time of posting these messages. Soon after, a number of police officers reportedly gathered outside the family house. To avoid further pressure on the extended family, Mr. Raiya decided to return to Phnom Penh. The police followed him until he boarded the bus. Mr. Raiya has reportedly fled the country, but remains concerned about the safety of his family and his wife's family.

61. In early June 2018, an ex-CNRP supporter currently living abroad posted a message on Facebook saying that he would not vote. Over the next few days, police officers visited various family members of his who are living in Cambodia, and questioned them – either at their homes or at the police station – about his whereabouts. The family members have reported that police harassment is continuing even weeks later, with phone calls and police visits to their houses. The family is fearful of further harassment. In another instance, when a Facebook user said that he would not vote in the upcoming election, a Ministry of Interior spokesperson told the media that the authorities would fine the individual, and there might be more penalties as well as re-education.[102]

62. In addition to the above instances, reliable information has been received concerning other reported incidents of commune and village level authorities harassing and intimidating persons to ensure that they vote. In one such instance in Battambang, a CPP member filed a complaint with the commune election committee on 25 July against an ex-CNRP member for sharing the Facebook post showing a 'clean finger' photo. Two days

[96] https://www.khmertimeskh.com/50492839/curb-calls-not-to-vote-ratanakkiri-governor/.

[97] http://www.freshnewsasia.com/index.php/en/localnews/88587-2018-06-02-03-37-48.html.

[98] https://www.reuters.com/article/us-cambodia-election-threats/cambodias-rulers-cajole-and-coerce-voters-to-boost-election-turnout-idUSKBN1KF0LQ.

[99] http://www.freshnewsasia.com/index.php/en/localnews/92455-2018-07-10-07-16-19.html.

[100] KHM 1/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=13372.

[101] https://www.facebook.com/photo.php?fbid=1586059918186847&set=a.321587721300746.107; https://www.facebook.com/photo.php?fbid=1586838424775663&set=a.321587721300746.107.

[102] https://www.voacambodia.com/a/police-hunt-for-facebook-user-calling-for-election-boycott/4440774.html; https://www.phnompenhpost.com/national/police-warn-boycott-fb-group-involved-clean-fingers-campaign.

later, the village chief reportedly called the man's wife and told them to go vote to prevent her husband from being arrested. Claims of ten more instances where ex-CNRP members or supporters were effectively forced to flee their homes in July, due to threats or fear of arrest have been made. Some further instances were also reported in the media.[103]

63. Other reports have included officials making claims that voting was compulsory and that persons who did not vote would be imprisoned. Some instances have been covered by the media, including a report from Prek Russey commune in Stung Treng where villagers told journalists that local authorities had threatened to impose a fine of 300,000 and 350,000 Riel (USD 75 and USD 87) on non-voters.[104] There were reports of threats that local officials would make it more difficult for voters to obtain birth or death certificates and other local services if they did not vote for the ruling party, some of these reports were direct to the Special Rapporteur, others covered in the media.[105]

64. The extensive rhetoric on penalties highlighted above – including by the NEC – added to the existing climate of fear and uncertainty amongst voters. Some CPP senior officials went as far as to claim that those without ink-stained fingers at the end of the election would be easily identified as supporters of rebels or traitors.[106] Although in one speech the Prime Minister did say there would be no penalties for those who did not vote, he did so while threatening imprisonment for those who "cheated" and inked their own fingers after the election.[107] Instead of recognising the scale of fear that was leading Cambodians to consider inking their own fingers and avoid being penalised after the election, Government officials preferred to frame this as illegal activity exposing persons to risk of imprisonment.[108] Following the election, two teachers were convicted of theft for stealing an indelible-ink bottle from the polling centre where they were on duty. One reportedly told the court that she stole it for family members and colleagues at school to dye their fingers without casting ballots, as teachers were being told that their salaries would be cut if they did not vote.[109]

65. In light of these incidents and the statements made by representatives of the Cambodian authorities at all levels, it is relevant to recall that the Human Rights Committee has noted, "persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."[110]

C. Legal action against individual voters

66. According to information received, on 19 July 2018 Mr. Chea Chiv, an ex-CNRP member in Battambang, invited some of his friends and former colleagues for a party at his house at Anlong Vil commune. Subsequently, Mr. Chiv posted on Facebook a group photo holding up their index fingers with the message: "our finger is really clean". Based on complaints reportedly filed by some CPP members, the Battambang Provincial Election Committee (PEC) found him and four others guilty of violating Article 142, LEMNA. The

[103] For example https://www.rfa.org/khmer/news/politics/cnrp-in-phnom-proek-flee-from-persecution-07302018091558.html; https://www.rfa.org/khmer/news/politics/released-cnrp-activists-after-questioning-07292018061837.html.

[104] https://www.rfa.org/khmer/news/politics/people-was-threatened-to-vote-07022018042055.html; https://www.reuters.com/article/us-cambodia-election-threats/cambodias-rulers-cajole-and-coerce-voters-to-boost-election-turnout-idUSKBN1KF0LQ.

[105] https://www.rfa.org/english/news/cambodia/threats-07172018164210.html.

[106] https://www.phnompenhpost.com/national/nonvote-vote-rebels-aids-authority-chief-slams-rainsys-call-boycott-national-elections.

[107] https://www.phnompenhpost.com/national/pm-dont-stain-election.

[108] http://www.freshnewsasia.com/index.php/en/localnews/88296-2018-05-30-02-00-55.html.

[109] https://www.khmertimeskh.com/50518185/teachers-convicted-for-stealing-election-ink/.

[110] CCPR/C/Rev.1/Add.7, para 19.

PEC concluded that their participation in the dissemination of the 'Clean Finger' campaign is contributing to causing confusion leading to loss of trust in the election, making eligible voters reluctant to go to vote, and is intended to prevent eligible voters from going to vote.[111] The five men were fined 10 Million Riel (USD 2,500) each. On appeal, the NEC upheld the fine of Mr. Chiv, but reduced the fine on two to 5 Million Riel (USD 1,250) and acquitted two others.[112] The case is reportedly under appeal at the NEC. The CPP deputy commune chief in Anlong Vil told journalists that he had also filed similar complaints against twenty other ex-CNRP officials.[113] On 25 July, a Ministry of Interior spokesperson said that between 30 and 40 complaints were filed against ex-CNRP supporters in Battambang and Kratie provinces alone.[114] The status of these complaints is not known.

67. In another instance, on 26 July the NEC announced that it was taking action against Mr. Choung Choungy, an ex-CNRP lawyer who had uploaded on Facebook a video in which he analyzed the law relating to a boycotting of voting and concluded that calling for a boycott did not violate any law.[115] The NEC found that his activities supported Mr. Sam Rainsy who has appealed for a boycott, leading to confusion and loss of trust in the electoral process. It is not known if any hearing was conducted or if Mr. Choung Choungy was able to present his defence. The NEC directed the Ministry of Interior, Ministry of Post and Telecommunication, and Ministry of Information to block social media accounts of Mr. Choung Choungy; the Ministry of Justice to review and take action against him as he was banned by Supreme Court from conducting political activities; and the Bar Association to review and take action with respect to his activities in interpreting the Constitution, Criminal Code, and Election law on Facebook. The Ministry of Justice is reported to have forwarded the matter to the Phnom Penh prosecutor for a decision on the steps forward.[116]

68. The application by the election committees of Article 142 of the Law on National Assembly elections in the context of the boycott calls raises serious concern. While most of the elements of Article 142 appear to penalise coercive acts, its broad interpretation appears to be aiding restrictions on the legitimate right of freedom of expression. Two particular provisions – creating confusion resulting in the loss of confidence in the election and creating loss of confidence in the secrecy of voting – appear overbroad and vaguely worded, inconsistent with the precision required by international human rights law.

69. The NEC reference to Mr. Choungy's presentation leading to confusion or trust in the electoral process raises questions at many levels. He uploaded a video providing a legal analysis, which differed with the opinion of the NEC and the Cambodian Government. Even if the opinion was false or flawed, it would be protected by freedom of expression. In this particular instance however, Mr. Choungy's interpretation of the law appears fully consistent with international human rights law. Not only has the NEC interpreted Cambodian law in a manner that violates Cambodia's obligations under international law, but it has further penalized a lawyer who has provided the correct legal interpretation.

D. Control of media, including social media

70. On 12 March 2018, the NEC issued a Code of Conduct for Media, part of a broader document: 'Regulations and Procedures for the Election of Members of the National Assembly in the 6th Legislature and the election laws". The Code of Conduct also includes a section on "Prohibitions for the Media" which include: broadcasting news leading to confusion and confidence loss in the election; expression of personal opinion in the ongoing events which are reported; publishing or broadcasting news that affects national security,

[111] Decision No. 001 dated 26 July 2018, Battambang Provincial Election Commission.

[112] https://www.necelect.org.kh/english/sites/default/files/images-attachment/EN_152.jpg. Upheld by the Constitutional Council on 15 August 2018, http://www.ccc.gov.kh/detail_info_kh.php?_txtID=921.

[113] https://www.khmertimeskh.com/50514898/poll-boycott-callers-pressured-to-apologise/.

[114] https://www.thmeythmey.com/?page=detail&id=67192.

[115] https://www.necelect.org.kh/khmer/content/3448.

[116] https://www.phnompenhpost.com/national/choungy-case-sent-nec-capital-courts.

political and social stability; and use of provocative or offensive language that may cause disorder or violence.[117]

71. The Code is similar to one issued by the NEC prior to the local elections in 2017 which led the Special Rapporteur to raise concerns.[118] In particular, the broad and imprecise terminology used could lead to sweeping restrictions on the media, incompatible with international standards.[119] Journalists have a responsibility to report on many issues in the run-up to an election, in particular controversial issues, and they should not face arbitrary restrictions. The Human Rights Committee has stated: "[i]n order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential."[120]

72. On 28 May 2018, the Ministries of Interior, Information, and Posts and Telecommunication adopted an Inter-ministerial Proclamation (*Prakas*) entitled 'Controls of Publication of Website and Social Media Processing via Internet'. The proclamation, made public on the Ministries' websites on 4 June, aims at controlling all online publications or news content sharing or written messages, audios, photos, videos, and/or other means intended to create turmoil, leading to undermine national defence, national security, relation with other countries, national economy, public order, discrimination and national culture and tradition. The three Ministries stated that they had established specialized units to cooperatively monitor, study, and research to enable legal action against illegal business activities and publications online.

73. For any law or regulation to be in accordance with applicable international standards, the provisions would need to be clearly elaborated, particularly terms such as 'national security', 'political and social stability' and 'turmoil' and 'national economy'. Some of the phrases in the proclamation are vague and overly-broadly framed, and do not comply with requirements under article 19(3), ICCPR. Such framing of provisions is not sufficiently precise to enable an individual to regulate his or her behaviour. Moreover, the issue arises whether the aims identified in the relevant provisions – such as preventing turmoil, the undermining of public order or political and social stability – do in fact justify such limitations on the freedom of expression. In this regard, the Human Rights Committee has established that, "the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights".[121]

74. In order for elections to be genuine, robust and unfettered, public debate is crucial. Such debate depends on the free communication of ideas concerning public and political issues so that the public is fully informed of all points of view, even when such views might be opposing and even controversial. The use of information and communication technologies is an extremely important means for achieving this. Instead, this proclamation appears to confer a level of discretion on those enforcing them that would amount to an undue intrusion on the rights of targeted persons.

75. Government control and online surveillance is a significant chilling factor for freedom of expression in Cambodia. The Cambodian authorities blocked 17 popular websites from July 27 to 29, over the election period. The websites included Voice of America's Khmer service, Radio Free Asia's Khmer service, and local radio program Voice of Democracy. A senior official at the Ministry of Information claimed that the websites were selected as they were provocative and very political in their tendencies, focusing only on the election.[122]

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[117] https://www.necelect.org.kh/english/sites/default/files/EN-070.pdf.

[118] A/HRC/36/61, paras 61-62.

[119] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23205&LangID=E.

[120] CCPR/C/Rev.1/Add.7, para 25.

[121] CCPR/C/GC/34, para 23.

[122] https://www.aljazeera.com/news/2018/07/cambodia-blocks-17-media-websites-vote-180728103300267.html.

E. Harassment of human rights defenders

76. The absence of the CNRP from the polls and the previous experience with the 'Situation Room' in 2017 also led most civil society groups to distance themselves from the 2018 elections. These included the three main election-monitoring organisations, COMFREL,[123] NICFEC,[124] and Transparency International,[125] who stated that they would not be conducting any election observation. COMFREL later clarified that its volunteers would monitor the human rights situation in the context of the elections.

77. On 5 July, a Facebook account posted a claim that COMFREL were using European Union funding and hiring ex-CNRP supporters to sabotage the election and cause chaos.[126] COMFREL denied the allegations in a statement, which also clarified that while they were not registering with the NEC nor deploying election observers as in previous elections, they would deploy 300 citizen observers throughout the country to monitor the exercise of voting rights by citizens, "including their uncoerced decision about 'going to poll' and 'not going to poll'".[127] The Special Rapporteur has received information indicating that intimidation of COMFREL and its volunteers increased soon after. There were at least 30 reported instances of volunteers being questioned or warned of arrest by local police. Trainings conducted by COMFREL for its volunteers became particular targets: five out of twelve were visited by police and military police – in Kampong Thom, Kampong Cham, Kampong Speu, Svay Rieng and Bantey Meanchey. One day before the election, the Kampong Cham Governor claimed that COMFREL was illegally recruiting observers.[128] Concerned about the security of their staff and volunteers, COMFREL decided to scale back its polling day monitoring.

78. Intimidation does not appear to have been limited to the volunteers alone. COMFREL staff were also warned of arrest in at least four provinces. In addition to regular surveillance by police and local authorities, COMFREL offices in five provinces also received 'friendly visits' from the police who wanted to know the details of their activities. According to COMFREL, the intimidation against their staff and volunteer 'citizen observers' was organized and systematic.

VI. Polling day and aftermath

79. Twenty parties registered for the 2018 National Assembly elections: a significant increase from the eight that had contested the previous 2013 elections. With the CNRP dissolved, the main opposition parties from that election were FUNCINPEC and the League for Democracy Party (LDP), which had gained 3.66 per cent and 1.03 per cent respectively of the popular vote in 2013. Four other of the twenty parties had won a combined 2.03% of the popular vote in 2013.[129] Six other parties had contested the 2017 local polls although not the 2013 national elections, of which only the Khmer National United Party won a commune chief position with 1.13% popular vote.[130] Five other parties won a combined

[123] https://www.rfa.org/english/news/cambodia/comfrel-vote-05152018163110.html; https://www.khmertimeskh.com/50514040/nec-to-process-more-observers/.

[124] https://www.phnompenhpost.com/national/nicfec-opts-not-observe-citing-fears-volunteers-election-watchdog-will-not-field-monitors.

[125] http://www.ticambodia.org/download/ti-cambodia-press-release-2018/?wpdmdl=2685&masterkey=5b29d4718d826.

[126] https://www.facebook.com/229595330754816/posts/635167700197575/.

[127] https://comfrel.org/wp-content/uploads/2018/07/741_Statement-on_-Denial-of-Allegation-on-COMFRELs-activities-in-2018-election_ENG-Final.pdf.

[128] http://www.freshnewsasia.com/index.php/en/localnews/94240-2018-07-28-11-22-22.html.

[129] Khmer Anti-Poverty Party (0.65%), Cambodian Nationality Party (0.58%), Khmer Economic Development Party (0.51%) and Republican Democratic Party (0.29%).

[130] Seven parties won commune councillor positions: CPP – 6503, CNRP – 5007, FUNCINPEC – 28, KNUP – 24, GDP – 5, LDP – 4, Beehive – 1.

popular vote-share of 0.57 per cent in 2017.[131] Six parties in the 2018 elections were completely new – registered after the 2017 local elections.[132] In comparison, the CNRP had won 44 per cent of the popular vote in 2013. In short, of the 19 opposition parties, none had any record of attracting a significant percentage of the popular vote in recent years and none came anywhere near the previous support of the former CNRP. It raises the question of whether there was really 'genuine competition' in the election, as stressed by the Human Rights Committee. It is also striking that in Cambodia's first election of the modern era in 1993, twenty parties, many recently established, contested the election. Twenty-five years later, it is notable that this position was echoed in the 2018 election.

80. Although there were some complaints of opposition parties being obstructed or hampered during campaigning,[133] they were relatively minor and fewer than in past elections. This is consistent with the changed nature of this electoral campaign where the participation of small opposition parties was vital in making it a multi-party election, despite the inevitability of a CPP win.[134]

81. Polling took place on 29 July between 0700 and 1500. On 15 August, the NEC announced the results: official turnout was 83.02 per cent, and the CPP received 76.85 per cent of valid votes, while FUNCINPEC, LDP, and Khmer Will Party came second, third and fourth with 5.89, 4.86 and 3.35 per cent respectively.[135] Only two other parties received more than 1 per cent of the vote (KNUP, GDP). The other 14 parties received a combined vote of 6.39 per cent. Invalid ballots accounted for 8.55 per cent of total votes – approximately five times higher than the 2013 and 2017 elections. The CPP won all 125 seats at the National Assembly.

82. There were reliable complaints received from various people compelled to vote following threats or intimidation on polling day, including in Phnom Penh, Tbong Khmum, Kampong Cham and Ratanakkiri. These reports mentioned house visits and phone calls from village and commune officials who made threats ranging from facing difficulty in public services, being reported to commune authority, and to being considered opposition.

83. The Special Rapporteur also received some information of payments to vote following polling. According to these reports, villagers in Tbong Khmum, Kampong Cham and Ratanakkiri were paid 20,000 Riel (USD5) by village authorities – following voting on 29 and 30 July – if they could show ink on their fingers as proof that they had voted. There were also reports of commune/village officials checking fingers to identify those who had not voted. In Ratanakkiri it was claimed that soldiers and police in villages were checking to find those who had not voted. Some such reports were covered separately in the media.[136]

84. The Special Rapporteur received many reports that fingers of workers would be checked on their return to work, however, most such reports could not be corroborated. In one instance however, a Phnom Penh based company issued a letter on 26 July stating that any Cambodian employees found without ink on index finger would be deducted two-day wages from their salary.[137] After the letter was leaked on social media and drew online criticism, the company apologized for the statement made in error, and issued a clarification the next day stating that there would be no such deductions.

85. The Special Rapporteur has seen photographs that appear to show military and police personnel holding up their inked index fingers on parades on the day following the election. Two such photographs can be identified as the Military's 53 Brigade as well the

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[131] Beehive Social Democratic Party (0.45%), Grassroots Democracy Party (0.07%), Cambodian Youth Party (0.02%), Cambodia Indigenous People's Democracy Party (0.02%), Khmer Power Party (0.01%).

[132] Light of Khmer Party, Our Motherland, Khmer Rise party, Khmer United Party, Khmer Will Party, New Light Party.

[133] https://phnompenhpost.com/national/gdp-says-city-denying-it-billboard-placement.

[134] https://www.khmertimeskh.com/50503101/pm-tells-officials-to-facilitate-campaigns/.

[135] https://www.necelect.org.kh/khmer/content/3520.

[136] https://www.rfa.org/khmer/news/politics/authority-traces-people-did-not-go-to-vote-08012018070242.html.

[137] https://www.facebook.com/FreeTEPvanny/photos/pcb.1099544213529057/1099540516862760.

Battambang city police department. With respect to the latter, the Battambang city police chief Pang Heang told media that the policemen were neither intimidated to show their fingers nor forced to vote, but that they had proudly displayed their inked fingers.[138]

86. In a statement highlighting the successes of the election, the Ministry of Foreign Affairs noted the "peaceful and upbeat atmosphere" in which 20 parties campaigned over 21 days for an election with "genuine opposition".[139] According to the Ministry, the high turnout indicated the "strong confidence of the citizens in the electoral process". The statement also stressed the presence of 220 international observers, 80,000 political agents[140] and 80,000 others from national associations and organisations.[141]

VII. Conclusion and recommendations

87. National elections, until the 2018 elections, had been steadily improving in terms of compliance with international human rights standards and Cambodian laws, in spite of being marred by varying degrees of intimidation of voters, and attacks on political opponents. National elections in 2013 and local elections in 2017 raised some expectations that an opposition could gain government through peaceful elections as foreseen in any democracy. The 2018 elections represent a departure from previous trends due to the dissolution of the former main opposition party and the banning of a significant number of senior members of the former opposition from political activity for five years. This seriously calls into question the genuineness of these elections, as stipulated in article 25 of the International Covenant on Civil and Political Rights. The redistribution of seats from the former opposition to other parties, particularly at the commune level, raises very serious concerns about respect for the right to take part in the conduct of public affairs through freely chosen representatives as it has effectively disenfranchised a significant proportion of citizens, including in the Senate.

88. In parallel, the use of law to restrict debate and the targeting of media, political opponents, civil society organizations and individuals, including through the use of criminal charges, has shrunk the space for serious political debate, an essential factor for the enjoyment of the right to take part in the conduct of public affairs. Pluralistic political debate is an essential element in demonstrating genuine competition in any election. The Special Rapporteur highlights in particular reaction to calls for a boycott of the elections, which, in a non-compulsory election, is recognized by the Human Rights Committee as a permitted exercise of freedom of expression. The reports of threats to voters if they did not vote are of particular concern: the ink-stained finger, a sign in the past of hope and freedom, ironically has become a symbol of coercion.

89. The Special Rapporteur strongly encourages the expansion of democratic space so that civil society organizations, human rights defenders and political activists, including members of the former CNRP, can actively and openly participate in inclusive political debate. She therefore calls, in particular, for the unconditional release of Kem Sokha; the lifting of the ban on the 118 ex-CNRP senior members ; the alignment of laws and regulations such as LANGO, the Law on Political Parties, the lèse majesté provision and others with international standards; reform of the NEC to ensure and maintain its independence from politics; and the lifting of restrictive measures on the activities of civil society organizations such as the 2 October 2017 circular requiring prior notification for activities of civil society organizations. Such steps would also be consistent with the

[138] https://www.rfa.org/english/news/cambodia/democracy-08012018165625.html.

[139] https://www.mfaic.gov.kh/site/detail/19855.

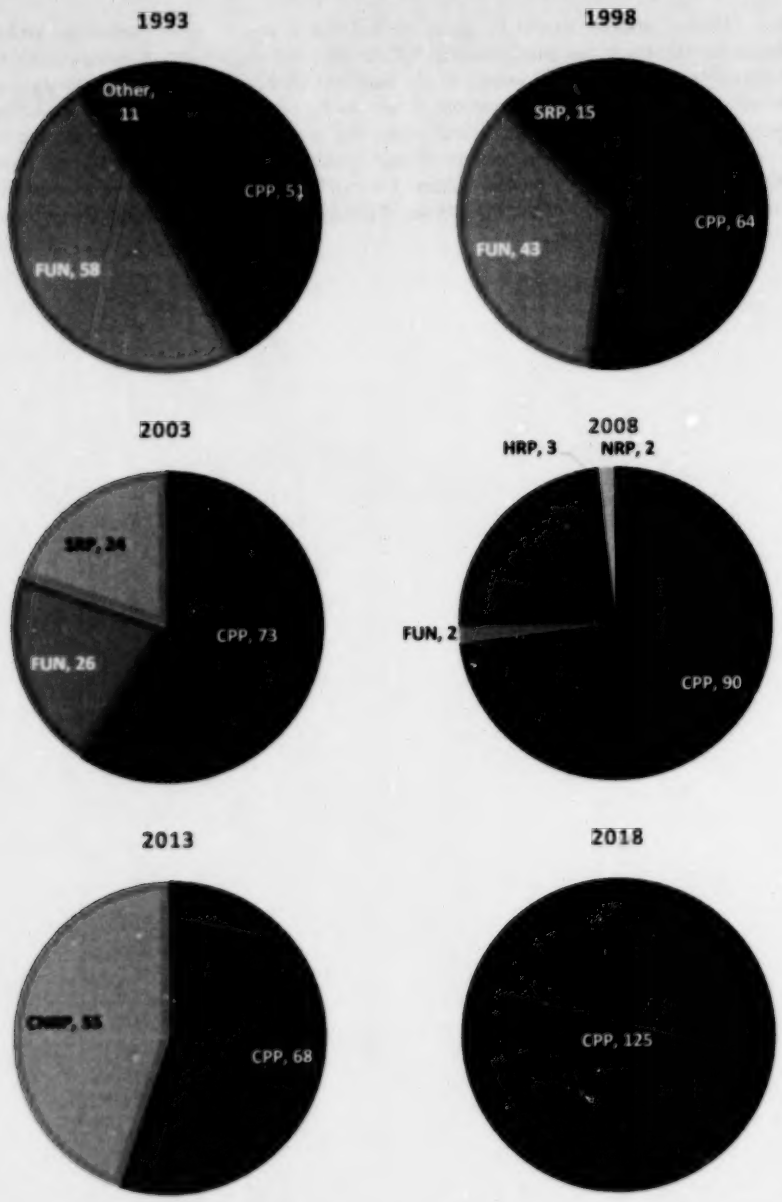
[140] Of these, nearly 46,000 were from the CPP. FUNCINPEC and LDP had agents in approximately half of the 22,967 polling stations, see https://www.necelect.org.kh/khmer/sites/default/files/images-attachment/Party-Agent_Registration_report.jpg.

[141] Nearly half of the observers are reported to be from the Union of Youth Federations of Cambodia, an organization headed by the Prime Minister's son, also a CPP Parliamentarian, https://www.reuters.com/article/us-cambodia-election-monitors/election-monitoring-groups-in-cambodia-headed-by-pms-son-ambassador-idUSKBN1KA0FS.

Cambodian authorities' commitment to Sustainable Development Goal 16, which will be reviewed at the High Level Political Forum in 2019.

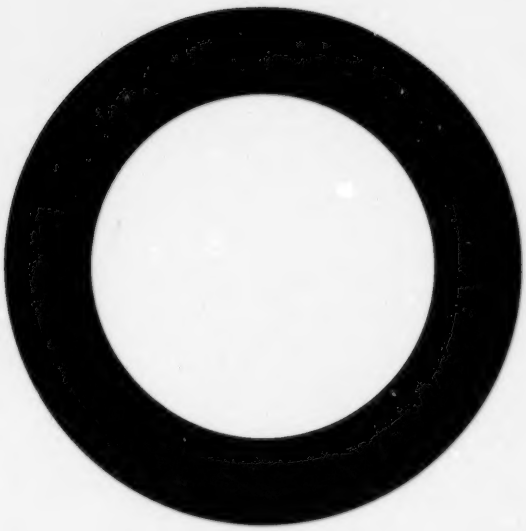
90. Utmost priority should be given to building a culture where criticism, within reasonable bounds, is not only permitted but accepted and encouraged as indispensable to maintaining peace and development in the short and long term; where the separation of powers between organs of Government as well as the separation of State and the ruling party is respected and cherished; and where the possibility of a peaceful change of Government from one party to another through genuine elections is accepted as the norm rather than resisted by any means. Unless Cambodians and the international community strive for this, the vision of the Paris Peace Agreements and the Cambodian Constitution will remain a distant dream.

Graph 1: National Assembly seats won by political parties: 1993 to 2018



Key	
CNRP: Cambodia National Rescue Party	HRP: Human Rights Party
CPP: Cambodian People's Party	NRP: Norodom Ranariddh Party
FUN: FUNCINPEC Party	SRP: Sam Rainsy Party

Source: National Assembly Cambodia, http://www.national-assembly.org.kh/group-article/3.



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Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the Royal Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia.

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Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State

Comments on the Report of the Special Rapporteur on the situation of human rights in Cambodia

This document is the comments of the Royal Government of Cambodia (RGC) on the Report of the Special Rapporteur on the situation of human rights in Cambodia dated 19 June 2018 (hereinafter "the Report") and Addendum dated 20 August 2018 (hereinafter the "Addendum").

The RGC commends on the approach taken by the Special Rapporteur using the lens of SDGs in evaluating the overall development and promotion and protection of human rights in Cambodia in the Report. Technical assistance in improvement of judicial system should be recognized.

The reflection on discrimination against Vietnamese and campaign on ethnic hatred by some opposition politicians in Para 9 of the Addendum is considered as a positive move by the Special Rapporteur.

However, the RGC is not in agreement and is disturbed by the countless accusations without any specific evidence made by the Special Rapporteur.

Most of her previous requests for comments did not provide adequate time for the RGC to cross-check information regarding the accuracy and credibility of the various allegations made against the government. The time factor is an essential part for the RGC to provide proper point by point responses based to her report. We believe that this factor alone is totally in contradiction to her "duty to seek cooperation with and provide assistance to the RGC".

According to the Report and the Addendum, every accusation made by those against the RGC are considered by the Special Rapporteur as a 'fait accompli' without her questioning the accuracy of the facts and the background that transpired, the political motivation, to name just a few. Quite on the contrary, all the RGC's responses to safeguard its rightful legitimacy, sovereignty, independence and public order are categorically treated as "oppression."

With regards to the Addendum, the RGC is seriously doubting the motive of the Special Rapporteur in publishing information going back from the elections from 1993 until the present. The RGC is not clear as to her intended messages: Does she want to portray that all the previous elections were fraudulent including that of the 2018? Or does she intent to rewrite a totally different narrative about Cambodia's elections to put into the official record?

Despite her long report, she failed to reflect what are the reforms that have been achieved by the National Election Committee. For instance, in terms of electoral system, in previous elections, there were always allegations on vote irregularities such as voters' list, registration and management, etc. Now that the voter registration being digitalized, any allegation on voters' list has been neutralized and the new list was well accepted by all political groups. Such significant achievement was overlooked by the Special Rapporteur.

In her coverage of the 2013 election, the Special Rapporteur only provided a one-sided narrative version of the opposition groups. Although the Addendum gave every little details of actions from the opposition groups, it failed to reflect properly the explanations made by the RGC concerning the violence-provoking conducts, the disruption of public order and the destruction of public properties made by these groups.

In two other instances regarding the actions of COMFREL, the Special Rapporteur did neither mention the credibility of the organization when it made false claim on the indelible ink nor did she mention that, as electoral watchdog, COMFREL failed to condemn violent activities of the opposition group protesting at the polling station.

With the firm respect of the impartiality of the institution that the Special Rapporteur represents, the RGC wishes to provide additional comments to the previous responses in the Report in July 2018 and to the Addendum.

Cambodia's Election 2018

Cambodia adheres to a multi-party democratic system as clearly demonstrated by the sheer number of political parties involved over the last five general elections: 20 for the 1993 general election; 39 for the 1998 election; 23 for the 2003 election; 11 for 2008 election; and 8 for 2013 election. There are 20 officially registered political parties for the election in 2018.

The outcomes of the 29th July election reflected a prevailing "stable functioning democratic process" in Cambodia.

The most noteworthy observation is the peaceful and upbeat atmosphere in which the electoral campaign and the Election Day took place. For 21 days, 20 political parties had the opportunity to conduct their electoral campaign, unimpeded in their activities, and free to promote their policy platforms and express their views, some of which were very harsh criticism against the Government. On the last day of the campaign, we have witnessed long procession of cars and motorcycles, wielding flags and banners from different political parties, crisscrossing peacefully throughout the capital without any incident. On the election day, long queues of voters can be observed, even before the opening of the polling stations. International observers were surprised by the ordinary and orderly behaviors of voters. They recognize that the process of vote counting was conducted carefully with professional polling service officials.

Out of 8,380,217 registered voters, 6,956,900 went in their polling station, representing 83.02 % of the voters. That represents an excellent rate of participation if we compare with the rates of the previous ballots and with those current in quite a lot of western countries. The votes divide up into 6,362,241 valid votes and 594,659 invalid votes. The CPP obtained 4,889,113 votes, the 19 other parties divide up 1,473,128 other valid votes, the bulk of which went to FUNCINPEC with 374,510 votes, the LDP with 309,364 votes and the KWP with 212,869 votes. As such nearly 1.5 million people voted in favour of another party than the CPPC. These votes are thus representative of the votes for the opposition. We can draw the following observations from these results:

1) No one can dispute the will of the overwhelming majority of registered voters who went to the ballot to freely express their choice. This choice calls the respect for all, including for foreigners.

2) The CPP maintains its status as the ruling party since 1998 (just like the PAP of Singapore or the CDU-CSU of Germany, for example), which reflected the wide popular support.

3) If we consider the exceptionally high number of invalid votes this time as compared with the previous elections, we can deduce that it was a rejection or a dissatisfaction with the current political proposition of the CPP. In other words, we can consider that more than two million voters (out of some 7 million) expressed a preference different from that of the CPP.

From various published statements of national and international observers, the National Election Committee (NEC) is to be given credit for its remarkable professional works, which has enabled the smooth conduct of a democratic, free and fair election.

By generally accepted standards, the first criterion for the legitimacy of an election is the participation rate of registered voters. For this election, the turnout of 83.02% has exceeded those of the elections in 2013 (69.61%) and in 2008 (75.21%). This exceptional high turnout rate is truly a reflection of a strong confidence of the citizens in the electoral process and in the NEC, the institution that manages it. This is important to point out that the voter participation rate exceeds, sometimes by far, those in several Western democracies, including some of which that are strongly critical of the Cambodian election

now. From the perspectives of some political analysts, this participation rate is a complete repudiation of the call for a boycott by some opposition politicians.

The second criterion for legitimacy is the pluralism of political offer or to put it differently, does the voting citizenry have a choice between different, and even opposing, options? Observers on the ground can attest to that effect, i.e. concrete and genuine rejection by some political party leaders to the policies of the ruling party. Public political debates between opposing candidates have taken place and are well covered by news media and in numerous television channels. Unlike in the past, these debates were civilized exchanges and not tainted by hate speech, incitement to racism, populism and ultra-nationalistic rhetoric. For the first time, the Cambodian citizenry was exposed to true democratic and sensible debates about the economic development, political, institutional and social issues that affect their lives, a far cry from the past hysterical speeches about Vietnam and the Vietnamese.

Nearly 7 million Cambodians voters have made their choice and this choice must be respected by all, be they Cambodians or foreigners, ordinary people, journalists, activists or diplomats. The choice of the Khmer nation, a sovereign nation, must be respected.

It is worth noting that there were 539 international observers from more than 50 countries, some of which came from respected international institutions, among others, the International Conference of Asian Political Parties, the Asian Parliamentary Assembly, the ASEAN Inter-Parliament Assembly, the European Council on International Relations, to witness this historical moment of Cambodia's peaceful democracy, not to mention the nearly 80,000 political party agents and about 80,000 others from national associations and organizations.

Cambodia regrets the politically motivated assessments of some foreign governments who refused to send observers and instead declared from the beginning until the end that the election was not free and fair. Disingenuously ignoring the technical quality of the electoral process is tantamount to displaying the utmost contempt for the will of the Cambodian people expressed through the 6,956,900 ballots. Such manner undermined the spirit of friendship and cooperation that have been enhanced thus far and casted doubt on the genuine sincerity to witness Cambodia further progressing in its irreversible democratization while enjoying the "longest peace in modern history" and consistent sustainable development.

Newly-created political parties in 2018 elections

The RGC noted with deep regret once again the bias and the prejudice of the Special Rapporteur in her comments on the newly-established political parties in the 2018 elections.

Such a reference implies the discrimination of the political and civil rights of the Cambodian people to participate in political life, including the creation of a political party, which are well guaranteed in the Constitution. In the 2018 elections, 19 political parties did oppose the ruling party, Cambodian People's Party (CPP). It is as democratic a true political contest can be with real contenders to the present ruling party. Some parties, which are long-standing opponents to the CPP, did not have much success in the past because they refuse to resort to the CNRP's ultra-nationalistic and racist populism rhetoric promoting social hatred and division.

Call for electoral boycott

Unlike some countries, Cambodia does not have any law punishing the people who do not cast their vote. However, a call for electoral boycott is considered as violation against both Article 34 of the Constitution and Article 142 of the Law on the Election of Members of the National Assembly. Article 34 guarantees the right to vote and Article 142 stipulates that it is illegal to "deter" citizens from registering to vote, or to cause "confusion resulting in the loss of confidence in the election".

Release of convicts

Cambodian politicians, analysts, land activists, and journalists were consecutively amnestied by His majesty The King as proposed by Samdech Techo Prime Minister Hun Sen. As of 31 August 2018, 23 convicts were released:

- Kim Sok was released on 17 August 2018. He was sentenced to 18 months in prison on 10 August 2017 on charges of incitement and defamation for insinuating that the ruling party was behind the killing of analyst Kem Ley.
- Tep Vanny and 3 other activists were released on 20 August 2018. On Feb. 23, 2017, the Phnom Penh Municipal Court convicted Tep Vanny of assaulting two security officers during the 2013 protest at Hun Sen's home, and sentenced her to 30 months in prison.
- Two former Radio Free Asia reporters Oun Chhin and Yeang Sothearin were released on bail on 21 August 2018;
- Sourn Serey Ratha, President of the Khmer Power Party, was released on 23 August 2018. On 13 August 2017, Mr. Sourn Serey Ratha was arrested and charged with inciting soldiers to disobey orders after he criticised the deployment of troops to the Lao border. He posted on his Facebook that conflict with Laos would only harm soldiers, while the generals enjoyed their "money" and "girls" in the comfort of air-conditioned rooms. He was charged under Articles 471, 472, 494 and 495 of the Criminal Code for "*inciting military personnel to disobedience*", "*demoralisation of the army*" and "*incitement to commit a felony*".
- Um Sam An, an American and Cambodian citizen and a former CNRP lawmaker, was released on 25 August 2018. On 10 October 2016, he was sentenced to two years and six months in prison for his Facebook posting in which he accused the government of ceding territory to Vietnam by using improperly demarcated maps at a time of heightened political sensitivity surrounding border issues.
- Meach Sovannara, former head of the CNRP's information department, and other 13 ex-CNRP officials were released on 27 August 2018. The 14 were found guilty of leading and participating in an insurrection after a violent clash between party supporters and Daun Penh district security guards at the Freedom Park on 15 July 2014.

According to Cambodian law, the Prime Minister has the rights to propose for amnesty to His Majesty The King and that the King will make the final decision whether to grant the pardon. Amnesty is normally practiced during three major festivals in Cambodia: Khmer New Year, Water Festival and Buddha Day – Visakha Bochea.

According to Cambodian laws, the recent release of the 23 convicts was categorized in 3 groups:

First, release by the King's amnesty pursuant to the Prime Minister's proposal. This category applies for convicts having served two-third of imprisonment term and other special circumstances. Tep Vanny, Um Sam An, Meach Sovanara, Sourn Serey Ratha, and several others were released after they wrote to the Prime Minister, recognizing the court's judgments and seeking him to make a proposal to the King to grant their amnesty.

Second, release pursuant to the court procedures. Kim Sok was released because he had completely served his imprisonment term.

Third, release pursuant to the court's discretion. The two former RFA staff, Oun Chhin and Yeang Sothearin were released on bail and awaiting court hearing in the future.

Dissolution of CNRP

Based on *Kem Sokha's* video footage in which he confessed to the conspiracy to overthrow the government through a "*Colour Revolution*" modelled after those carried out in Yugoslavia and Serbia, the *FUNCINPEC Party* and the *Cambodian Youth Party* filed

separate complaint to the Ministry of Interior (MoIn) requesting the dissolution of the CNRP. Based on these complaints, and as provided for by the Law on Political Party, the MoIn proceeded to submit the case to the Supreme Court for adjudication. In addition to *Kem Sokha*'s video footages, there are ample evidences as confirmed by *Kem Sokha* that criminally implicate him and other senior officials of the CNRP.

The act of treason of *Kem Sokha*, as the top official of the CNRP, partially implicate the CNRP. As a matter of fact, the daughter of *Kem Sokha*, Ms. *Kem Monovithya*, pointed out in her capacity as a member of CNRP's Standing Committee and Deputy Director-General of Public Affairs, that this plan was not committed by Kem Sokha alone. It was done in a systematic manner by the whole CNRP as an organization. Furthermore, Mr. *Eng Chhai Eang*'s affirmation of cooperation outside the country with the convict *Sam Rainsy* and the latter's gathering with CNRP parliamentarians are proof to the systematic act of treason linked to CNRP, which is a flagrant violation of point 6 and point 7 of Article 6 new (2) and Article 7 of the Law on Political Parties (from here onward LPP). An interview with *Radio Free Asia (RFA)* on October 27, 2017 confirmed openly the illegal interactions between CNRP parliamentarians and convict *Sam Rainsy*. Based on an overwhelming evidence, including those cited above, the Supreme Court came to the conclusion that the CNRP as an organization conspired with a foreign power to overthrow the legitimate government in Cambodia by way of a "*Colour Revolution*", such an act is an illegal act against the Kingdom of Cambodia, harming the national security and a threat to the peace of the country, and in clear violation of Points 2, 3, 5, 6, 7 and 8 of Article 6 new (2) and Article 7 of the LPP.

Article 6 new (2) of the LPP stipulates that:

"*All political parties shall not undertake any of the following activities:*

....

2. Undertake sabotage against liberal multi-party democracy and constitutional monarchy;

3. Violate security of the state;

....

5. Incite to cause the break-up of the nation;

6. Use voice messages, images, documents, or acts of convicted felons for the political benefit of their political parties;

7. Agree openly or tacitly or conspire with convicted felons for the political benefit of their political parties;

8. Support or plan or conspire with others to oppose the interest of the Kingdom of Cambodia as stipulated in point 1 to point 5 above."

Article 7 of the LPP states that:

"All political parties must not be under the subordination or order of foreign political parties or government".

The Supreme Court issued its final judgment on November 16, 2017 to dissolve the CNRP and ban political activities of the 118 CNRP leaders for a five-year term in accordance with Article 44 new (2) which states that *".... a political party that violates Article 6 new (2) and Article 7 of this Law, the court may decide to either*

- *suspend the activities of the political party for a period of no longer than five years; or*
- *dissolve the political party."*

The decision of the Supreme Court was made by a panel of nine judges at a public hearing held in accordance with the court procedures of the Kingdom of Cambodia whereby all the relevant parties were afforded the opportunity to present their defense by appointing their own representatives or legal defense team. Following the Supreme Court's summon, the CNRP have chosen not to file a defense petition nor have they appointed representatives or lawyers to attend the court proceedings, which is tantamount to an abandonment of their

legal rights to defend themselves before the court. We wish to highlight that such court practices do not differ from those of other countries, whether they belong to the Common Law or Civil Law system. By refusing to participate in the court proceeding, the CNRP not only abandoned its rights to legal defense but also acquiesced to a guilty plea in absentia for its violations of the various provisions of the LPP.

According to Article 128 new and Article 130 (new) of the Constitution, the judicial power is an independent power entrusted to the Supreme Court and the courts at all levels, and no organ of the legislature or executive power can interfere in the affairs and decisions of the court.

The Supreme Court's decision is the decision of a sovereign state. The enforcement of judicial decisions in a country is the internal affairs of a sovereign state, such principles are enshrined in Articles 2.1, 2.4 and 2.7 of the Charter of the United Nations. Non-enforcement of laws will jeopardize the country's national security and peace. As a state upholding the rule of law, Cambodia cannot take lightly the threat to the peace and stability of the nation nor can it allow the CNRP to escape its legal consequences of its illegal actions.

On 8 December 2017, the dissolved CNRP filed an appeal to reverse a ruling by the nation's highest court to dissolve it. The Supreme Court rejected the appeal according to the legislation.

On 21 August 2018, the Supreme Court denied bail to former CNRP leader Kem Sokha for the second time. His pre-trial detention had last been extended by six months in March 2018.

Prohibition of political activities of 118 CNRP leaders for a five-year term

The prohibition of the political activities of 118 CNRP leaders for a five-year term is the direct consequence of the Supreme Court's decision after the dissolution of the CNRP. Such prohibition is not a permanent deprivation of political rights. The Constitution and the laws of the Kingdom of Cambodia provide for this kind of prohibition of the right to vote, for example, for incarcerated criminals. The Law on the Election of the National Assembly also prohibits members of the National Election Committee (NEC) to vote during their mandate. The deprivation of some political rights for individuals pursuant to national laws is not a novelty for Cambodia but it is in fact a common practice for most countries around the world, for example U.S. laws prohibit American citizens not born in the United States to run for President. After nearly three decades of war which ended only in 1998, political rights and human rights in Cambodia have been widely recognized, protected and continuously promoted, perhaps now far better than most of the countries in the region. Many political parties are conducting their activities under the Constitution and in accordance with the principles of liberal democracy. There were 20 political parties registered and recognized by the NEC to participate in the 6th general elections which took place on July 29, 2018.

The reallocation of party's seats

According to Article 150 (new) (2) of the Constitution, the NEC is an institution mandated to organize, manage and administer the Election of Senate and the Election of Members of the National Assembly and other elections. The NEC shall exercise its mandate in an independent and neutral manner so as to ensure that the election is conducted in a free and fair manner pursuant to the principle of multi-party liberal democracy.

Article 76 (new) of the Constitution stipulates that members of the National Assembly shall be elected by free, equal, direct election and secret ballot. Moreover, Article 27 of the Law on the Election of Members of the National Assembly (from here onward LEMNA) further stipulates that the political party that has been registered in accordance with the LPP shall have the right to register its political party and the list of candidates running for the election

to be members of the National Assembly. Re-allocation of seats of dissolved party shall be undertaken pursuant to the LPP in the legislature of the National Assembly. The NEC shall comply with the provisions stipulated in Article 138 (bis) of the LEMNA, which stipulates that, in the mandate of the National Assembly, if any political party declares to give up on their seats or has been dismissed from political party registration or has been dissolved according to the LPP, the list of its candidates and representatives will become invalid and disqualified. In that event, the NEC will distribute those vacant seats within at most 7 days to other political parties who participated in the national election.

Organisation of Previous Elections

Excluding the election organised by UNTAC in 1993, the National Election Committee (NEC) has successfully organised the following elections: 1) five elections of Members of the National Assembly, including the July 2018 election; 2) four elections of Senators; 3) two elections of Municipal/Province/City/District/*Khan* Councils; and 4) four elections of Commune/*Sangkat* Councils.

In the 2013 election, a total of 6,735,244 voters representing 69.61% of registered voters casted their votes. The total registered voters in 2013 were 9,675,453. In the 2017 commune/*sangkat* elections, 7,107,395 out of 7,865,033 registered voters turned out, accounting for 90.37%. This was a higher turnout than in many other countries. The election went smoothly and peacefully. The successful organisation of these elections is a reflection of the positive development of liberal democracy in Cambodia. People could fully exercise their rights and express themselves throughout the election processes. People participated in campaigns to support their favorite parties without any intimidation. Each member of a political party could freely carry out its respective campaign activities without any threat or intimidation from any institution or political party. During the election process, there wasn't any major violence affecting the election. Also, there was no report of political assassination of any member of a political party.

The 2013 election was monitored by 292 international observers and 40,142 national observers who announced that the election was conducted in a free, accurate and fair manner. National and international observers appraised that for each past election in Cambodia there was a continuous improvement, in particular the commune/*sangkat* election in June 2017. The voter registration system has been modernised, which made it impossible for any political parties to criticise it or use it as an excuse to reject the election results.

Plots toward the Rejection of Election Results in 2013

Although the 2012 commune/*sangkat* election result was accepted by all political parties, the CNRP planned to create excuses in order to reject the results of the 2013 election of members of the National Assembly as follows:

- After the 2012 commune/*sangkat* election, the Sam Rainsy Party (SRP), currently known as "Candlelight Party", and Human Rights Party (HRP) were well aware that they could not win in the 2013 election against the CPP. The leaders were therefore forced to merge the two parties into one party; that is, the Cambodian National Rescue Party (CNRP), with assistance from non-government organisations supported by foreign countries. In the 2012 commune/*sangkat* election, the CPP received 3,631,082 votes, the SRP received 1,224,460 votes and the HRP received 580,483 votes. In total, these two parties received 1,804,943 votes. Although the two parties received fewer votes than the CPP, there was no notable protest against the election results, and all parties accepted the results.

- The SRP and HRP boycotted the updating of the 2013 voter list, which was based on the 2012 voter list. Some stakeholders of the election process evaluated that the 2012 voter list as better than the 2008 voter list. The NEC provided four months to all political parties, including the two parties, to file any complaint in relation to the voter list. This boycott was their premeditated plan to create an excuse to accuse the NEC that the voter list was fraudulent, even though they did participate in the election process.

- After the announcement of the official voter list for the 2013 election, the National Democratic Institute (NDI) fabricated a lie that the NEC had deleted the names of some 1.04 million voters supporting the CNRP. Likewise, COMFREL made up a somewhat similar figure: 1.25 million names. This demonstrated a coordinated plot between the CNRP, NDI and COMFREL to allege that the NEC deleted the names of their supporters from the list. Such pre-emptive move was aimed at rejecting the election result should they ultimately lose in the elections. In the 2008 election, the NDI alleged that 88 people could not find their names on the voter list. However, the NEC found that among the 88 people, 15 had their names on the voter list, 19 had 2 names in one polling station, 7 had registered twice, 3 had lost their right to vote, 2 had died, 2 were not residents in that commune and 1 had not registered. These specific and accurate efigures illustrated that the allegation made by the NDI regarding the missing of the 88 names was a fabrication and manipulation. In 2013, under the pretext of confidentiality, the NDI refused to cooperate with the NEC in providing the 1.04 million names whom they alleged were missing from the voter list, and COMFREL also refused to provide its 1.25 million names. These acts highlighted the premeditated collusions by the two organisations and the CNRP.

- On 23 July 2011, in a meeting through a video conference from Tunisia, Sam Rainsy spoke to his supporters about the intention to overthrow the legitimate authorities by using the model of change applied in Tunisia. Sam Rainsy boasted of his hope that "*Cambodia will see the change seen in Tunisia because such a movement is currently happening in Libya, Yemen and Syria, and sooner or later, it will happen in Cambodia*". Sam Rainsy wanted Cambodia to have the same changes seen in those countries; currently, Tunisia and Egypt are suffering from turmoil, insecurity and political instability while Libya, Yemen and Syria are suffering from bloody wars.

- Ahead of the elections, the leaders of the CNRP implemented their plans to mobilize the public by inciting them to protest on various issues such as land, human rights, environment and natural resources while the RGC had been working to resolve them. This party invented false information and made baseless allegations against the leaders of the RGC on such diverse issues in order to mislead the general public, nationally and internationally, into believing that the RGC is incapable of leading the country.

- Local and foreign media, such as Voice of America, Radio Free Asia, Voice of Democracy and Beehive Radio, are totally biased in favor of the opposition party, which used social media including Facebook, YouTube and Twitter, to freely disseminated false information relating to political and social issues. They echoed the fabrication, manipulation and incitement by the CNRP and its supporters for the purpose of polluting the social atmosphere, gaining political benefits and destabilizing the CPP. The pro-opposition media formed a network and acted in sync, both before and after the election, supporting the opposition party to win the election or to overthrow the legitimate authorities, by grossly ignoring the professional integrity and code of ethics of the press.

- Two weeks before polling day, the CNRP released a false document using the name of the International Republican Institute (IRI) as the institution conducting a survey showing that the party would receive votes accounting for 64 seats. The dissemination of such a false document was to attract sympathy from the general public to win the election or to prepare an excuse for a rejection of the election results by using this figure as a basis for claiming that there were election frauds when the party lost. Later on, the IRI denied that it had not issued such document.

- On 19 July 2013, Sam Rainsy and Kem Sokha said, during their rally at the Democracy Park and during an interview by RFA, that it was the NEC stealing votes and proclaimed in advance that the CNRP would win the election, and if they lost, they would not accept the election results and would call for mass demonstrations.

- On 20 July 2013, Sam Rainsy stated in Kampong Speu province, "*All compatriots, this is the last opportunity; if we don't rescue our nation now, it will be too late in four or five years as the Vietnamese will come and settle everywhere in Cambodia and we will become slaves of Vietnam ...*"

- One day before polling day, which was supposed to be a cooling day, COMFREL released an exaggerated statement that the indelible ink to be used for marking those already voting

could be easily washed off after just a few minutes. It was the first time that such an issue related to the indelible ink was brought about before the 2013 election. The claim was widely spread to mislead the public into believing that voters could vote more than once. This was a psychological attack that could influence the decision of the voters as they could become sympathetic to the CNRP and vote for the party. It also could make the public suspicious of the election process and results because they might believe that the CPP committed electoral frauds. This was a premeditated plan to be implemented merely one day before the election in order to help the opposition party to win the election or to be used as an excuse to protest against the election results should it lose. In fact, this ink is of high quality and has been used in elections in other countries such as India, Afghanistan, Singapore, Thailand, Malaysia, South Africa and Nigeria.

- Ahead of the elections, the opposition leaders always use ploys, claiming time and time again that the election would not be free, accurate and fair. They would not participate in the election and would reject the results, but finally they participated in the election. During a meeting with international election observers, Sam Rainsy and Kem Sokha proclaimed that they did not recognise the NEC and would not accept the election results, but stated that they might win the election. An international observer, who is a senior politician from the International Conference of Asian Political Parties (ICAPP), asked Sam Rainsy, "*If the CNRP does not accept the NEC and the election results, why would your party participate in the election?*" "*And if your party wins, would you still reject the election results?*" Sam Rainsy and Kem Sokha did not answer these questions, and diverted the discussion to other topics. Such behaviour implies that the CNRP would have accepted the results only if it had won the election, and rejected the results if it had lost.

There were many other activities that the opposition party carried out in various forms to make the public lose trust in the RGC in an attempt to win the election. The CNRP had also used various accusations against the NEC and the CPP before the election to create an excuse for rejecting the election results.

2013 Election Process at Polling Stations

With many years of experience, the NEC conducted the election at polling stations in a smooth and professional manner regardless of the disturbances caused by activists of the opposition party outside some of the polling stations. The CNRP used every possible tactics to have their activists and supporters lose trust in the NEC and try to mislead them into believing that the CNRP lost because the NEC committed election frauds.

In accordance with the procedures, on 28 July 2013, by 7:00 am, the 6 election officers including the chief of the polling station, two agents of the CPP, two agents of the CNRP and the agents of FUNCINPEC, Sam Rainsy Party, Human Rights Party and Norodom Ranariddh Party as well as observers from COMFREL had gathered at polling stations. Therefore, in one polling station, there were 2 agents from the CPP compared to 5-6 agents from the other parties, including 2 from the CNRP and several others from the other parties as well as observers from COMFREL.

Agents from political parties and observers from NGOs witnessed all steps in the election process, from the checking of ballot boxes, casting of ballots, opening and closing of ballot boxes, vote counting and transporting the ballot boxes to the Commune/*Sangkat* Election Commissions (CEC), the Capital/Provincial Election Commissions (PEC) and the NEC. The agents of all political parties present signed all forms relating to the election process at each polling station during the handing over of reports at commune/*sangkat*, capital/province, and NEC levels. The agents and observers recorded the election results based on Form 1104, which was provided at all the 19,009 polling stations. Despite the presence of those observers and their agents who signed all relevant forms at all the levels (CEC, PEC and NEC), the CNRP still rejected the election results, offensively alleging that the election was full of irregularities. If what was being alleged had been true, it would have meant that the agents of the CNRP, agents of other parties and observers were also taking part in the election frauds.

Had there been any irregularities, the agents of political parties could have orally complained directly to the polling station chief. If not satisfied with the resolution provided

by the chief, the agent could have filed a complaint using Form 1202 with CEC before 11:30 am of the following day. As a matter of fact, there were no complaints causing any agent of the CNRP to refuse to sign any form required by the NEC at any polling station.

The rejection of the results was nothing new, as at every election, the party led by Sam Rainsy has always rejected the election results. While COMFREL claims itself to be an independent mechanism for election observation to ensure a free and fair election, why did it take a stance biased towards the opposition party, claiming that there were irregularities in the election while its own representatives took part in every process on the polling and vote counting day and witnessed the calculation of results?

With their agents and observers present, the political parties and NGOs were able to calculate the election results by themselves based on Form 1102 posted up at the polling station or Form 1104 provided to the agents and observers at the polling station. Form 1104 provides information on preliminary results to political parties. Based on Forms 1104 from each polling station sent by CEP and PEC, the NEC announced the preliminary results of the election in the evening of 28 July 2013.

Situations outside Polling Stations

The CNRP organised many youth groups to create disturbances and chaos at the polling stations in order to fabricate false stories and provoke various issues as a psychological tactic to gain sympathy from the voters, although it was a violation of the law.

- At one polling station in *Boeung Tumpun* commune (Phnom Penh), a well-arranged group of about 100 opposition activists, among which only 4 or 5 people were residents of this commune, showed up from 7am to 6pm to raucously shout and provoke chaos so as to disturb the voters at the polling station by using slogans such as: "*missing names, no names, washable indelible ink and "Number 7, Number 7! [the number on the ballot for the CNRP]*". The group also threatened the officials at the polling station by shouting "*after leaving the polling station, you will be killed*", etc. People in this group used smart phones which allowed them to take photos and videos at the polling station. These activities were strictly prohibited at all polling stations under the Law on Elections of Members of the National Assembly (LEMNA). At 10 am, Sam Rainsy went to visit the polling station, but was not allowed to enter.

- At another polling station in this commune, a mob accused the polling station's Deputy Chief of election fraud, as he put four null ballots in a drawer and then added another three ballots in the presence of election officers, agents of the political parties and observers. As a matter of fact, he put null ballots onto the drawer so that they were not mistakenly mixed up with the valid ballots. This act did not violate the electoral regulations and procedures. Moreover, the CNRP's agents also acknowledged that they were aware of the placement of those null ballots and confirmed that it did not constitute fraud. However, these gangs still threatened the Deputy Chief saying that "*if he did not kneel down and apologise, they would kill him when he left the polling station*". Finally, fearful of his safety, the Deputy Chief knelt down to apologise, and the gangs took photos and uploaded them on Facebook with the caption: "*a thief is caught, and now he begs for forgiveness*".

- At one polling station in *Kandal* province, a mob of CNRPs activists provoked disturbances and chaos, preventing voters from voting by alleging that they were "*Yuon*" [a derogatory term for Vietnamese]. In fact, those people were villagers in the neighbourhood with proper names on the voter list at that polling station and valid residence and identity cards. Such acts by the opposition activists were completely illegal, constituting a criminal offence.

- At many polling stations across the country such as *Kandal, Prey Veng, Takeo, Kompong Thom* provinces and *Phnom Penh Capital*, the opposition party's activists engaged in various improper acts, such as raucously shouting to cause disturbance, using psychological war to make voters believe that the CNRP would win the election, alleging that "*Yuon*" were allowed to vote and election officials committed election frauds. They instructed the people to vote for "*Number 7*", and shouted "*Yuon*" when seeing any fair-complexioned voters standing in the queue.

- During ballot counting, CNRP activists, who were watching the ballot counting in front of the polling station, caused anarchy, including roaring with excitement when hearing the election officials read the ballots for Number 7, and insulting and throwing bottles of water when hearing the ballots for Number 4 [the number on the ballot of the CPP].

- Violence broke out at one of the polling stations in *Steung Meanchey*, caused by the opposition party activists as they provoked disturbances and chaos and incited their party's supporters to stand up against the competent authorities, using a protest against irregularities at the polling stations as a pretext. This violent act resulted in a clash with the authorities and the burning of two military police cars. Such an act was a starting point of a premeditated plan to create an excuse, so that they could allege the election process was full of irregularities and therefore reject the election results.

- On the evening of the polling day, before the results were final, Sam Rainsy announced that the CNRP had won the election, but he soon withdrew this claim.

- The CNRP used various stratagems to cause chaos and create political instability through false stories by releasing their activists' audio record alleging that Samdech Techo Prime Minister Hun Sen and Samdech Kittipritthbindit [Bun Rany, the wife of Samdech Techo Hun Sen] had fled the country. The lie about the absence of Samdech Techo made the people so fearful that they rushed to fuel cars, buy food supplies, and think of various scenarios to be prepared in case the country fell into a civil war again, as some had experienced decades of war in Cambodia.

- The CPP, as the ruling party, strictly forbade the authorities to take any countermeasures in order to avoid any clash on the polling day. Clashes could escalate into violence, thereby providing the opportunity to the opposition to have an excuse for accusing the RGC.

The Post- 2013 Election Situation

- On the day after the election, the CNRP exaggerated the alleged irregularities of the election process and demanded that a new mechanism, called a "*Joint Committee*" or "*Special Committee*", be established under the leadership of the United Nations or an NGO to investigate the so-called election irregularities, with the NEC playing only the role of facilitator. This proposal indeed contradicted the LEMNA and the Constitution, which stipulate the duties and obligations of the NEC and the Constitutional Council.

- COMFREL on that same day announced that its own calculations of the election results showed that the CPP had won 49.49% of the total votes and the CNRP had won 43.05%, making the CPP and the CNRP secure 67 seats and 56 seats, respectively. The 1-seat difference between the final official results and this calculation of COMFREL resulted from a miscalculation of election results in *Kratie* province. COMFREL could have calculated the total seats won by each political party through Forms 1104 which COMFREL's representatives had received from the polling stations or through Forms 1102 posted up at polling stations. Due to a series of coordinated conspiracies and the fact that COMFREL announced the election results which contradicted the exaggerated results claimed by the CNRP, COMFREL subsequently removed the announced figures from its website in order to defend the reliability of the CNRP's fabricated results. Nevertheless, COMFREL's version of the election results had been widely circulated to various media outlets' websites, and the news had already been published in *The Cambodia Daily*.

- On 4 August, Kem Sokha declared: *"At 5:00 PM, the ballot counting showed that the CNRP won 76 seats. Someone (unknown) reported to the diplomatic missions that we won; then the ballot counting was suddenly stopped. They (CPP) announced that the CPP won; so, they had trick to cheat us. [...] International Organizations, diplomats from the democratic countries and all NGOs knew clearly that the CNRP won the election."*

- Furthermore, on that same day, 4 August, Sam Rainsy said: *"The CPP claimed that it has from 6 to 7 million members, but it received only around 3 million votes, so where are the rest? Those 3 million votes for the CPP were said to come mostly from threatening, stealing, cheating, buying, ghost ballots, Yuon and empty ballots"*. If such a statement were true, it meant that there would not be any supporters for the CPP.

- On 6 August, Kem Sokha told the CNRP's activists and demonstrators: "*I can't mention the source, but it was from a foreigner, H.E. Sam Rainsy and I – on the polling day at 5-6pm – were very well informed that we got 76 seats, yet an hour later the results were upside down.*"

- Sam Rainsy's Facebook page on 8 August posted: "*I know that security force movements are happening under the order of a ruler, and I also know that you – my fellow compatriots, soldiers, policemen and all members of the armed forces – are looking forward to a new government which will provide you with a salary of at least 1 million Riels per month. Therefore, now is the golden opportunity for all of you to unite and stand up with our citizens and fellow CNRP youths to demand for change toward the formation of a new government (led by the CNRP) in 2013 at all cost.*"

- On 12 August, Kem Sokha announced that the CNRP had won at least 63 seats, which contradicted his previous proclamation dated 4 and 6 August that the CNRP had won 76 seats. This announcement was just a trick and a tactic to lie to the citizens and international public.

- Sam Rainsy also incited people in provinces near Phnom Penh to "*participate in a historic mass demonstration... trembling the earth... to liberate our country... at any cost; if we let the dictators who are destroying our nation, who are notoriously corrupted and who used the Yuon to kill our own people, and if we allow them to continue for another four or five years, our nation will disappear; we, therefore, cannot let this happen and are prepared to rescue our nation at all cost.*"

- In almost every public forum, the opposition party used fabricated data of COMFREL and NDI regarding the alleged missing names of 1.25 million voters and 1.04 million voters, respectively, as the excuse for the CNRP's loss. The CNRP's leaders manipulated the election results, claiming that the CPP won the election due to fraud, and they boasted that they were seeking justice for the voters. This party thus incited and mobilised people to join a demonstration called "*a mass demonstration at the will of voters*".

- On 15 September 2013 at *Kbal Thnol* Bridge, the CNRP's leaders incited and mobilised people to use violence and cause insecurity in the neighborhood, and played dirty tricks on demonstrators to push them into clashes with police, resulting in injuries and deaths. The opposition party's leaders demanded that the deceased be paraded to the Democracy Park, where the demonstrators were mobilised and used it as the nerve centre of their campaigns. These acts were similar to what had happened in some countries where similar "colour revolutions" had taken place.

- A few days after the election, the opposition party began to mobilise their members and demonstrated once a week. It then turned into a daily demonstration. They declared to their supporters to keep demonstrating forever until the legitimate authorities were overthrown. They started from non-violent demonstrations and then pushed them into uprising, riots and violent protests joined by certain people, workers and youths, whom the opposition always claimed to represent the general will of the people. This was technically and financially supported by a number of foreign NGOs which claimed themselves to be the so-called Electoral Reform Alliance (ERA), in particular the NDI.

To realise their ambition, the CNRP used various tactics, insulting language and incitement without any responsibility in order to instil into their supporters' negative perceptions toward the CPP and leaders of the RGC. Such activities were carried out continuously before and after the election, during each rally and demonstration, such as:

The CNRP shouted insults at CPP members and leaders, calling them "*Yuon puppets*", "*Yuon heads with Khmer bodies*", "*traitors*", etc.; The opposition party used nefarious methods to demand the Head of the Royal Government to step down, so that the election could be re-organised; for example, they shouted, "*Hun Sen! step down*". The opposition party politically exploited the opinions of a small segment of the population as representing the will of the 15 million people. They also promised to increase the salary of teachers and civil servants to USD250 per month as a bait to lure them into the protests and to incite the hatred of class and racism for the sake of increasing the number of demonstrators.

In 2013, during each demonstration, the opposition party always exaggerated the number of demonstrators to 1 or 2 million; however, during the election campaign in 2017, Samdech Techo Hun Sen led the campaign which extended from *Chroy Changva* Bridge to Hun Sen Boulevard or to the 60m Boulevard (*Kbal Thnol*) and this gathering was only approximately 250,000 participants. This statistic clearly demonstrated that the opposition party did everything – including the exaggerated number of demonstrators – to fabricate the idea that one or two million demonstrators had expressed their will to overthrow the RGC.

In order to encourage and trigger demonstrations and strikes, on 23 December, Sam Rainsy and Kem Sokha told lies to the protesters that "*yesterday, I (Kem Sokha) learned from a source close to him (Samdech Techo Hun Sen) that, facing such a resistance, we could not stay. Yesterday, he (Samdech Techo Hun Sen) was about to step down, but now they (Vietnam) summoned him immediately... I fear that they (Vietnam) summoned him for an injection, and upon return, he refused to step down ...*" "*Yesterday, he was about to step down, and the forces were prepared to confess to the people ...*"

Sam Rainsy and Kem Sokha visited factories such as the *SL Garment Factory*, *Yakchin Garment Factory* and *Bavet Special Economic Zone* to incite workers to stop working, by promising to increase their wage to USD160 a month, while the party's activists threatened and prevented the workers from getting to work and caused some damages to the properties. At the same time, Vorn Peou, the leader of the *Informal Economy Association*, which supports the opposition party, led workers to protest in front of the Ministry of Labor and Vocational Training and in front of the Office of the Council of Ministers. Demonstrators destroyed some public and private properties, such as at the *Lux Beauty Salon*, in front of the Phnom Penh city hall and at Freedom Park.

While Sam Rainsy and Kem Sokha announced their intention to negotiate with the CPP, they organised the transportation of stones, bombs made of gasoline bottles (*Molotov* cocktails), batons, slingshots firing steel balls, guns, swords and tyres to be stored at the demonstration sites in order to encourage the anarchists to commit violence and crime, to use firearms and swords against the authorities, to destroy the factories as well as public and private properties, and to cause serious chaos on *Veng Sreng* Street on 2 and 3 January 2014. Such activities showed that the two persons' announcement of their intention to negotiate with the CPP was just to buy time and conceal their violent demonstration plots. The objective of the party's leaders was to cause bloodshed and point a finger of blame at the RGC, and ultimately to achieve their final plan of grabbing power, and thus, as Kem Sokha stated, they were following the Yugoslavian model.

The violent demonstrations and bloodshed did eventually take place on *Veng Sreng* Street as indicated by the advance intelligence of the three embassies provided to the RGC. The opposition party benefited from the violent demonstrations; some countries may have known or have not known about the well-thought-out plot, especially those that helped organise it, but rather they supported the illegal acts of the CNRP and alleged that the RGC used force to crack down on non-violent demonstrations, restrict the freedom of the people and violate human rights.

On 25 December 2013, Sam Rainsy said, "*this is the determination of the CNRP with Sam Rainsy and Kem Sokha speaking before workers, reiterating that the CNRP will form a new government, re-build the country, and 29th of December will be the finale*." Such appeals clearly demonstrated that it was a "colour revolution" movement to overthrow the legitimate authorities and incited the mobilisation of the public to revolt.

In the 2013 election, the opposition and its allied media and NGOs carried out a campaign to ensure that the public and politicians in a number of countries believed their lies, manipulations and fabrications that the electoral system in Cambodia was not fair and transparent and that the election outcome was falsified by the NEC and the CPP. In doing so, they aimed to pressure the top leaders of the RGC to step down and re-organise the election, or to overthrow legitimate authorities by using people power and persuading the international community to put various forms of pressure on the RGC.

The protests against the election results, which can be characterized as a "colour revolution" to overthrow the legitimate authorities, lasted for a long time without any tangible results, and members of the CNRP lost trust in the party, as shown by a gradual

decrease in the number of participants. Thus, the CNRP's leaders plotted to use violence against the public security forces so as to trigger a violent crackdown by authorities, aimed at creating an excuse to have negotiations with the CPP. The ensuing violence left 39 members of the public security forces wounded. The event was not an accidental clash between the protesters and the public security forces, but rather a well-thought-out plan, with various tools being readied for use in violent confrontations. The public security forces were ill-equipped to defend themselves, thus suffering injuries, while none of the protesters were injured.

Culture of Dialogue

Samdech Techo Prime Minister Hun Sen is a staunch advocate of the culture of dialogues throughout his political career. He met with the late King Father in Fere-en-Tardenois in 1987, which paved the ways for subsequent gatherings leading to the Paris Peace Agreement in 1991. He initiated the *Win-Win Policy* resulting in the full dismantling of Khmer Rouge's political and military organization in 1998. And he was the one who compromised following the post-2013 election to resolve national issues.

However, without trust and mutual respect, this culture of dialogue was derailed by the opposition parties.

Trust cannot be built when opposition leader compared Samdech Techo Prime Miniter Hun Sen to Qadaffi and spread rumor that his son is not of his own. There was not one single condemnation for the insulting remarks by Sam Rainsy against Samdech TechoPrime Minister Hun Sen during an interview as published in 2015 in a Western newspaper, which triggered the beginning of the end of the "*culture of dialogue*."

The government expects a "*genuine culture of dialogue*" where the opposition parties fulfill their roles as elected representatives by jointly discussing development policies at the parliament and providing constructive policy recommendation to the government for the sake of economic growth and prosperity of our nation.

As defender of democracy and human rights, the Special Rapporteur should urge opposition parties to respect the Constitution and the Cambodian laws and behave as the "*loyal opposition*" that respects civilized and democratic practices. They should not drive political support through provoking racial hatred, defamation, incitement and subversive deeds, which in turn, bring about the destruction to the country.

Freedom of Expression, Media and Assembly

It is commonly reported that the freedom of expression in Cambodia is under threat. However, it is a matter of misperception. In fact, it is quite the opposite. Currently, Cambodia has some 550 printed media institutions, 148 news media websites, 211 radio stations, 21 TV channels and 112 TV relay stations, 58 online TV channels, 5 digital pay-TV stations, 113 cable TV stations in provinces, and 39 press associations and media centers. Internet wise, more than 50% of the total population have access to it. Moreover, the Royal Government's policy is to increase the nationwide use of internet. Far from limiting on the freedom of expression, the Royal Government encourages more media expansion to enhance the free flow of sharing information and opinion.

We would like to point out though that freedom of expression is not the same as freedom to insult, to lie and fake information or to defame or discredit individuals or institutions/organizations. Statements inciting hatred and xenophobia are prohibited. That is why there are laws and regulations to sanction such practices, as in many other countries in Europe.

Cambodia undertook the amendment of the LPP based on the principles laid in its Constitution. From a legal perspective, the amended law applies indiscriminately to every political party and bears all the basic requirements that any democratic countries should adhere to. Nothing in the amended law is threatening the fabric of a multi-party system. As in all democratic countries, the amended law is aimed at preventing abuses that are against

the fundamental democratic principles, such as incitement to racial hatred, defamation, malicious attempt to destroy the social fabric and unity of the nation. The Royal Government is duty bound to protect the sanctity of its existing institutions.

What Cambodia did in terms of amending its own political party law is not at odd with international practices. For that matter, the EU, through the Venice Commission, has adopted in 1999 its "Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures." The prohibition or dissolution of political parties can be envisaged if necessary to protect a democratic society, when, for example, a party advocates violence in all forms such as racism, xenophobia and intolerance. We see the same practices and stipulations in constitutions and laws of some countries in Europe such as France, Denmark, and Portugal and also of some other countries in Asia namely Indonesia, Malaysia and the Philippines, etc.

As of May 2018, Cambodia is home to about 6,000 registered local and international associations and NGOs, an overwhelming figure as compared to its ASEAN neighbors. We have to point out that not all NGOs have the legitimacy to represent the civil society and to speak on behalf of the whole Cambodian population. A number of them, hiding behind the veil of supposedly humanitarian or development activities, are in fact deeply engaged in political activities funded by foreign institutions and governments. They have operated freely without any transparency and accountability in a totally unregulated area for some two decades.

The National Assembly has enacted the Law on Association and Non-Governmental Organization (from here onward LANGO) for the purpose of upholding democratic principles, freedom of expression and assembly, public order and social security, which are all enshrined in the Constitution. The law was carefully formulated taking on the best practices of NGO laws of other mature democratic countries like France, Australia, Singapore, Thailand, Japan, and the US (New York State and the California State). Not to say that it is also well in line with the existing national and international legal frameworks, i.e. Article 42 of the Constitution guaranteeing the right of association to be governed by the Law, Article 20 of the Universal Declaration on Human Rights and Article 22 of the International Covenant on Civil and Political Right (ICCPR).

Unfair critics and concerns so far made mainly by an opposition party and its allied organizations are based on mere groundless suspicions rather than on a sound and well-reasoned factual justification, to which the Royal Government find it not acceptable. Other critics are overblown, biased and misguided sometimes. For example, it was criticised that the Royal Government did not include stakeholders in the amendment and legal drafting process. This critic creates a wrong impression to the public, because it suggested that stakeholder participation is mandatory. Neither the Constitution nor statutes require the Royal Government to involve stakeholders in drafting legislation. Only best practices suggest that technical feedback from experts improve the quality of legislation. From this point of view, additional technical expertise could have improved the overall quality of the laws, but it was no means a mandatory requirement. That clarification notwithstanding, the Royal Government has worked for nearly two decades on numerous drafts in consultations with civil society organizations and major development partners minus a major super power which chose not to be involved in the drafting working group. The Royal Government is clearly of the view that 20 years of consultations is adequate.

Currently, there are 5,389 registered local associations and non-governmental organizations (CSOs) (2,215 associations and 3,174 non-governmental organizations), which reflect an average of 21 new associations and NGOs registered per month. After the Law on Associations and Non-Governmental Organizations (LANGO) was promulgated under Royal Decree NS/RKT/0815/010 dated 12 August 2015, until the end of June 2018, there are 744 associations and non-governmental organizations were established and duly registered with the Ministry of Interior pursuant to this law, out of which 418 are associations and 331 are non-governmental organizations. The Ministry is currently in the process of identifying the actual numbers of all registered associations and NGOs that are currently operational.

Based on the above data, there is no evidence that there is a decrease in the number of the establishment of local associations and non-governmental organizations as alleged by some individuals and self-serving organizations that the Royal Government and the Ministry of Interior are restricting the right to freedom of association and non-governmental activities, including the right to freedom of expression and opinions.

For the avoidance of any doubt, aside from the closure of NDI, there is no other case of any NGO being deregistered or closed down as the result of the implementation of the LANGO.

After the promulgation of LANGO, the Ministry of Interior has organized a national workshop on May 12, 2016, with approximately 500 participants from a broad range of stakeholders, including relevant ministries and governmental institutions, sub-national administrations, associations and non-governmental organizations, in order to promote the rule of law in the country and to facilitate the establishment of these civil society organizations in conducting their activities in compliance with the new law.

While most CSOs are legitimate organizations, there were numerous cases of financial scams and fraudulent activities committed by some organizations under the cover of NGOs, in particular involving rural credit operations. To protect the public, the Ministry has collaborated with the Securities and Exchanges Commission and the Ministry of Economy and Finance to organize a National Workshop on Unauthorized Activities in the Securities and Exchange sector and the Dissemination on LANGO.

The Ministry has issued two additional announcements, the first one on July 4, 2017 and the second one on December 11, 2017 to urge CSOs to comply with the LANGO.

The Ministry has also issued a press release related to the dissemination of LANGO to the wider public, stating in the most unequivocal terms the government's position vis-à-vis the civil society organizations as its cooperative partners in economic and social development.

The Ministry is pleased to inform that recently some 20 CSOs have approached the General Department of Taxation (GDT) to explain on the various legal provisions pertaining to their tax obligations. The GDT has provided clarifications as to the legal requirement for CSOs to obtain Tax ID as well as other beneficial provisions, i.e. related to tax exemptions and non-retroactivity, etc.

In addition, the Ministry has also issued a Notice No 1753 dated October 2, 2017 to the Provincial and Capital Administration and the relevant competent authorities to facilitate and create favorable conditions for activities of civil society organizations that are duly registered. For avoidance of any doubt, the notice states that duly registered organizations can conduct their regular activities as stipulated in their Statutes without having to ask permission from the local authority. For extra-curricular activities, not stipulated in their existing Statutes, there is a requirement to inform within 3 days prior to undertaking the activities.

Lately, the Ministry of Interior has been informed by our development partners, but not directly by the affected CSOs, that there were some harassment or intimidation on the part of the local authorities in limiting or forbidding their activities at the local levels, in general terms and not specific where such activities were taken place. The Ministry, in all sincerity, would like to urge those CSOs to reach out to the ministry and expressed their concerns directly. Without knowing the full situation first hand and relying only on hearsay, the Ministry would not be in a position to effectively resolve their concerns.

It was in that spirit that on 21 June 2018 the Ministry organized a "Forum of Partnership between the Government and Civil Society" to re-assess the cooperation situation between both parties and to find effective measures to overcome the challenges for all CSOs, particularly to support the reform of democratic development at the sub-national administrative levels. About 400 participants attending the Forum came from ministries, provincial and district administrations, development partners and some 200 CSOs.

The Forum made the following recommendations:

1. to establish a technical working with representatives from key line ministries and CSOs to work on improving the implementation of the LANGO, and other regulatory measures affecting CSOs' activities.

2. to organize regularly Partnership Fora as a trust building multi-partite mechanism (Royal Government, CSOs, private sectors and Development Partners) consistent with SDGs and partnership strengthening.

3. for other remaining recommendations from the CSOs', the Ministry of Interior is still working to resolve them in the spirit of strengthening and improving true partnership.

The Directorate General of Administration has already submitted a report to the senior level officials of the Ministry to request their guidance on the above recommendations.

Closure of NDI

NDI was banned pursuant to the Note Verbale of the Ministry of Foreign Affairs and International Cooperation (MFAIC) on August 23, 2017 on the basis that NDI did not have a signed MOU with the MFAIC, either prior and after the entering into force of the LANGO. The MOU entered with NEC is only a partial fulfilment of the registration process and as such does not provide adequate legal ground for NDI's legal operation in Cambodia. NDI has failed to comply with Article 34 of the LANGO, which stipulates that: "The competent authorities shall take measures to immediately stop any foreign association or non-governmental organization that conducts its activities without registration or which validity of memorandum of understanding is terminated by the MFAIC. Additional measures related to the expulsion under the Law on Immigration may be undertaken against any foreigner who works for a foreign association or non-governmental organization for committing the above offense regardless of other criminal punishments." The filing of an application by NDI one year post adoption of LANGO is sufficient proof of NDI's contempt of the law inasmuch as it is tantamount to an illegal conduct of its operation in Cambodia. Submission of an application to the MFAIC does not automatically equate to an approval of application just as when an individual applies for a foreign visa, there is no guarantee or an assumption that the visa will be granted. According to Article 14 of the LANGO, the MFAIC is not duty bound to provide an explanation for its decision regarding the approval or non-approval of the MOU application.

The Role of the General Department of Taxation and the Case of the Cambodia Daily

We start with the premises that in the context of the public administrative reform, which is a key pillar of the Royal Government's Rectangular Strategy Phase III, the General Department of Taxation (GDT) has been praised for its achievements in enhancing its capability in tax revenue collection in recent years through the reform of tax administration, human resource, modernization of its information technology system, etc. As a result of these comprehensive reforms, the GDT has exceeded the target for the past 6 years in a row, with a revenue target increased by 20% on average year-on-year, without having to introduce new taxes or increasing the tax rates, but rather through its efforts to expand its tax base at the maximum as well to ensure equity and a level playing field among all taxpayers.

The reform programs have benefited from technical support from numerous international development partners such as the IMF, World Bank, JICA, Overseas Technical Assistance (OTA) of the US treasury Department, and SIDA, etc. According to the *IMF's Finance & Development Report Article, Vol. 55, No. 1, dated March 2018*, Cambodia was recognized by IMF as one of the top five countries that excels in tax reform and achieves large revenue gains.

The GDT has taken preventive steps to tackle tax evasion with effective legal enforcement measures such as, *inter alia*, an unilateral tax registration of non-registered taxpayers, a tax audit to verify the integrity of taxpayers' tax declaration, and enforcement of tax arrears collection for taxpayers who do not fulfill theirs tax obligations, etc. These measures are generally implemented on taxpayers across all sectors, including the media sector, where the GDT has found cases of tax evasions. Unfortunately, and quite untairly, some critics have twisted a legal tax issue into a politically motived statement, accusing the Royal

Government for using tax and licensing measures to restraint the freedom of the independent media, mainly focusing on the audit of *The Cambodia Daily* and some radio stations.

For the records, the Royal Government would like to clarify that the case of tax evasion by *The Cambodia Daily* is not unique as the GDT has found many other taxpayers who have committed similar tax offenses. In fact, *The Cambodia Daily* has operated its business since 1993 without having any tax registration nor fulfilled its tax obligations. The GDT had made numerous attempts, by phone calls and by written invitation letters, requesting the owner of *The Cambodia Daily* to resolve its tax non-compliance issue. Quite regrettably, the newspaper owner did not cooperate with the GDT and postponed on numerous occasions the meetings without offering any valid excuses.

According to Article 117, 128, 130 and 131 of the Law on Taxation (LoT), the GDT has conducted unilateral assessment on *The Cambodia Daily*'s unpaid due tax only for the past 10 years, even though this newspaper has operated its business for more than 24 years. This tax assessment includes an amount of unpaid tax, plus additional tax and late payment interest.

According to Article 118 and 120 of LoT, *The Cambodia Daily* has the rights to protest, partially or as a whole, to the tax assessment made by the GDT within 30 days after receiving the notification letter by providing supporting evidence indicating that the GDT's tax assessment is not correct. However, *The Cambodia Daily* has chosen not to cooperate with the GDT and instead went on to turn a tax assessment matter into a politically motivated case and to lobby the international community to put pressure on the Royal Government.

The GDT has issued a demand for tax arrears settlement to the owner of *The Cambodia Daily* to settle its tax arrears by the deadline as determined by the laws. The owner of this newspaper, however, not only did not settle the tax arrears, but publicly announced the closure of *The Cambodia Daily* in its September 3, 2017 edition. Let the fact shows that the Royal Government did not shut down *The Cambodia Daily*, but it was the newspaper owner himself who did it. That fact notwithstanding, the GDT is merely trying to do its tax collection work as per its mandate.

Contrary to *The Cambodia Daily* case, *The Phnom Penh Post (The Post Media Co., Ltd.)* is quite the opposite. *The Phnom Penh Post* was operating in Cambodia since 2007 and has properly registered and fulfilled its tax obligation as stipulated by the laws. It has been filing its monthly and yearly tax return and paid punctually its tax due. The GDT regularly conducted a tax audit of *The Phnom Penh Post* and received normal cooperation, in term of submission of pertinent documents and information related to the business operation. The owner of *The Phnom Penh Post* has acknowledged the professionalism of GDT's tax auditors.

In response to some rumor circulating that the tax assessment on *The Post Media Co., Ltd.* is an attack of the freedom of independent press in Cambodia, Mr. Marcus Holmes, CEO of *The Post Media Co., Ltd.*, issued statement in his newspaper March 20, 2018 edition that the tax audit carried out on *The Post Media Co., Ltd.*, as well as on other enterprises, is not out of the ordinary. The GDT performed the tax audit in accordance with appropriate audit procedure and has no reason to believe any of these matters are politically motivated, and *The Phnom Penh Post* is not going to close like *The Cambodia Daily* did.

The GDT would like to inform that it has conducted 9,976 audit cases over the past four years, with the amount of tax collection accounting for around 2,265 billion USD. These results are good testimonial to the fact that the GDT has no motive whatsoever to target those independent media, provided they are in compliance with the tax laws. Tax audit is a routine work for the GDT as well as for any other country's tax administration in the world.

With the cooperation with relevant competent authorities such as the Ministry of Information, the Ministry of Interior, and the Ministry of Foreign Affairs and International Cooperation (MFAIC), the GDT has discovered that there are a number of media companies and NGOs which continue to operate illegally without obtaining operating licenses from the relevant authority nor registering and complying with the tax laws. Some

have obtained their licenses but have not registered with the tax administration; others have registered with the tax administration but have yet to fulfil its tax obligations. The GDT is cooperating with relevant authorities to encourage these entities to fulfil their tax obligations in line with its RMS 2014-2018, which was introduced by the Royal Government since 2013.

Another media case worth mentioning is *MMA (Cambodia) Co., Ltd.* (*Radio France International FM 92 MHz*), which has cooperated fully with the tax administration to fulfill its tax obligations after receiving the request from the GDT. Quite the opposite is the case of *Radio Free Asia (RFA)* and *Voice of America (VOA)*. These two news agencies have neither registered with the tax administration nor fulfilled legal tax obligations nor obtained any operating licenses from the competent Cambodian authority. The GDT has requested the two entities to clarify theirs tax compliance, such as tax registration, filing tax return and fulfilling other tax obligations, i.e. tax on salary and withholding tax. Not only that *RFA* did not register and fulfill their tax obligations, instead it has chosen to close its office, dismissed its employees and started operating in secret, in addition to pursuing their lobbying the international community to put pressure of the Royal Government.

As sum, the Royal Government would like to reiterate that tax audits are a normal part the routine tax administrative work, and the GDT has applied the same audit procedures on many other businesses across the board, regardless of whether the entities are independent media or not. The Royal Government welcomes the opportunity to cooperate with the international community and remains available to provide any additional clarifications on the above-mentioned cases.

Progress Report on Land Dispute Resolution on the Economic Land Concession for Sugar Cane Plantation

In 2006, villagers and communities in four provinces, namely Koh Kong, Kampong Speu, Preah Vihear and Oddar Meanchey provinces, have requested the Royal Government to resolve their land dispute claims related to the Economic Land Concessions of Sugar Cane Plantation for Exportation (Sugar Cane ELCs). Many efforts were made by the concerned companies in an attempt to resolve the issues over the past years without much progress. On August 24, 2017, the Royal Government mandated to the Ministry of Land Management Urban Planning and Construction to find solutions for these Sugar Cane ELCs in these four provinces. The Ministry have since initiated numerous meetings and discussions with all parties and stakeholders involved/interested in these disputes, including the European Union, some International Organizations, NGOs and the affected households. As a result, the Ministry established National and Provincial Taskforces in the four respective provinces and tasked them to conduct land dispute identification and information collection. The National and Provincial Taskforces has achieved the following concrete outcomes:

(i) Koh Kong Province

The disputed economic land concessions covered two companies, which are "*Koh Kong Plantation Co., Ltd*" and "*Koh Kong Sugar Industry Co., Ltd*".

The efforts has resulted in positive solutions with all the 986 households, representing 100% of the claimants, accepting the settlement offer:

- 175 households have received each 3 hectares of land and USD 2,500 compensation in *Dang Peng* and *Chi Khar Leu* commune, *Sre Ambel* District and in *Kandol* commune, *Botum Sar Kor* District.
- 200 households have received each 1.5 hectares of land in *Chi Khar Leu* commune in *Sre Ambel* District.
- 585 households have received each USD 3,000 and 2 hectares of land in *Dang Peng* and *Chi Khar Leu* commune, *Sre Ambel* District and in *Kandol* commune, *Botum Sar Kor* District.

- 26 households have reached a complete dispute settlement with "*HENG HUY Development Company*" and are currently undergoing land titling process for title issuance in *Chi Khar Leu* commune, *Sre Ambel* District.

(ii) Preah Vihear Province

Five ELC companies are involved in the dispute, namely "*Land Feng Cambodia International Company Limited*", "*Ruy Feng Cambodia International Company Limited*", "*Heng Yu Cambodia International Company Limited*", "*Heng Ruy Cambodia International Company Limited*", and "*Heng Nong Cambodia International Company Limited*".

After conducting the disputed identification and information collection process, 287 households have filled in the sheets with 57 households (around 20%) in *Mlou Prey I, Mlou Prey II, Sangker I, Sangker II* Communes, *Chhep* District and in *Pramer, Thbeng Meanchey* District and in *Tar Sou, Putrea* Communes, *Chey Sen* District, receiving total settlement.

N.B. The remaining 230 households' claims have been rejected due to either having previously received compensation or being not related to the sugarcane land issue. Moreover, those 230 claimants have accepted the mediated settlement as facilitated by the Ministry.

(iii) Oddar Meanchey Province

Three companies involving in the dispute, namely "*Cambodia Cane and Sugar Valley Company*", "*Tonle Sugarcane Company*" and "*Angkor Sugar Company*" have their ELCs withdrawn pursuant to the Council of Ministers Letter 283 dated March 13, 2015. A complete settlement has been reached for 412 households, which were provided a total of 1,028.37 hectares of land through a social land concession, of which 824 hectares of land were distributed for plot allocations and 204.37 hectares of land was used for infrastructure in *Sangkat Kon Kriel, Krong Sam Rong*. Currently 385 households have received their respective plots through a lottery draw while 27 households could not be identified.

(N.B. For the cases of the unidentified 27 claimants, the Ministry assumed that they were not valid claimants for a few reasons: 1) they are not the real affected peoples in the contested area; 2) they are opportunists free-riders who dare not show up during the identification stage as organized by the Ministry.)

(iv) Kampong Speu Province:

Three ELC companies are involved in the dispute, namely "*Phnom Penh Sugar Company*", "*Kampong Speu Sugar Company*" and "*Kampong Speu Plantation Company*". The provincial taskforce has completed 3,349 identification information sheets in *Am Leang* commune, *Thpong* District and in *Sangker Satork, Raksmey Samaki* and *Trapeng Chor* communes, *Oral* District.

The case of Kampong Speu is currently at the negotiation stage for claims that met the following criteria:

1. the affected households are in provincial and company name lists.
2. they have received confirmation from the village chief(s) as affected households.
3. the used to negotiate with the disputed company but have yet to receive any solution.

Households who have yet to receive compensation or have received improper compensation.

So far, 620 claimants have met the above criteria and are currently engaged in active negotiation.

(N.B. Those claims that fall under the following criteria are not eligible for compensation:

1. *Households who have already received proper compensation.*
2. *Households who have bought land in protected forest areas listed in 2002.*
3. *Households who have no credible source of land information.*

4. Households who have irregular documents including rewritten and cut and pasted documents.

5. Households who are not recognized by village and commune authorities and have no clear land location.

6. Households who have claimed overlapping plots.

7. Households who have claimed lands outside the company's economic land concession.

8. Households who have claimed plots on both military and state land.

The Ministry estimated that there are about 2,729 claimants who fall under one of the categories listed above.

The taskforce continues to undertake in close collaboration with local authorities and communities a comprehensive information collection in order to identify "*bona fide*" affected households but have yet to find and receive a settlement.

According to the Ministry's assessment, the ELCs has benefited the villagers/claimants in terms of infrastructure improvement, employment opportunities and improved welfare. Most of the non-eligible claimants are generally subsequent purchasers sight unseen who are not from the contested area.

The right of indigenous people to register their traditional residential land

Ministry of Land Management, Urban Planning and Construction rejects the statement that "*the right of indigenous people to register their traditional residential land remains largely unrealized.*" In reality, the indigenous peoples' land right in Cambodia is clearly guaranteed in the Constitution, the Land Law 2001 and other existing laws and regulations. Indigenous peoples have full rights to participate in, to leave or to opt out their respective established indigenous communities. They have options to manage their land, whether in the form of private land or communal land, whereas the Khmers, which represent the majority of the population do not have such a privilege. From the registration database, data of registered communal land indicates that indigenous people occupy and use larger land size than the general Khmer families. From that database, there are 24 indigenous communities that comprise 2,335 households and occupy an area of 23,425.13 ha. The average size per indigenous household is about 10 ha, while a Khmer family has about 2.6 ha land parcel on average, out of which 2.12 ha accounts for agricultural and residential land.

In the framework of participatory approach, the Royal Government piloted a project on communal land title registration for indigenous community since 2010 in cooperation with Germany and Canada up until 2014. With Germany, the pilot project under the *German-Cambodian Land Rights Program* (LRP) registered 3 communities (2 communities in *Rattanakiri* Province and one community in *Mondulkiri*), as validated in the human rights assessment, conducted by the German Institute for Human Rights. With Canada, 5 communities in *Mondulkiri* Province were registered, as confirmed in the *Canadian Land Administration Support Project* (CLASP) report dated June 2013.

The Ministry set out a target of registering ten communities per year using the state budget. These 10 communities are located in *Kratie, Stung Treng, Mondulkiri and Ratanakiri* Provinces. Communal land titling registration is done on a voluntary basis, meaning that the respective indigenous community has to submit its application to the relevant state institutions to start the process, which is outlined below:

Legal references: *Determination of Indigenous Community Identity [ref: National Policy and MRD Circular and article 23(!) of Land Law of 2001]; By-law development and registration as legal entities [Article 23 (2) – Land Law]; Collective land titling [Art. 25 Land Law and Sub-decree No. 83].*

Step 1: Ministry of Rural Development, Community and Supporting partner

5 activities need to be done

- Selection of indigenous community target and supporting partner
- Capacity and consensus building in Community
- Self-identification
- Identity appraisal and issuance of identity letter from MRD
- Development of Internal Rule on Land Use and Management

Step 2: Ministry of Interior

- Draft by-law consultation and appraisal
- Passing the draft by-law – holding general assembly at village
- Process registration as legal entities with the Ministry of Interior (from commune to MoI)

Step 3: Collective Land Titling

4 activities need to be done

- Consultation with members and neighboring communities on boundary
- Development of Sketch map and unofficial map (Preliminary Map)
- Preparation of application submitted to the Cadastral Office at district level and provincial land department
- Official Collective land titling (Government team)

Regarding to the inclusion of indigenous people in the process of communal land title registration, actual practices have indicated that indigenous people have full right to participate at every stage of the communal land title registration.

Up to May 2018, the Ministry has achieved the following results: Communal land titles have been delivered to 24 indigenous communities (2,335 households) covering an area of 23,425.13 ha, equivalent to 669 land titles, out of which 12 communities were granted in *Rattanakiri* Province, 7 communities in *Mondulkiri* Province, 4 communities in *Kratie* Province, and 1 community in *Stung Treng* Province.

For 2019 and subsequent years, with lesser number of voluntary application submissions from indigenous communities, the Ministry plans to register five indigenous communal land per year using the state budget.

The Royal Government deems this achievement as an outstanding work in the area of communal land title registration. It is worth noting that, compared to other countries that have similar indigenous communities, Cambodia's experiences in registering the communal land is an exemplary case that could be learned from.

Incident on 8 March 2018 in *Snuol* district, *Kratie* province

This incident is anecdotal and uncorroborated with conflicting reporting. As such, we do not believe that it is a systemic issue that can properly be addressed in this report.

Vietnamese Living in Cambodia

Vietnamese nationals currently residing in Cambodia not in accordance with the Immigration Law have acknowledged they are Vietnamese and are filling applications to register as immigrants under the Immigration Law. Referring to the 2015-2017 survey, there are 48,675 families comprising of 180,690 Vietnamese who are residing in Cambodia, out of which 81,580 are women, and 124,969 are over 18 years old. They are divided into 3 categories:

Cat 1: Old settlers: there are 69,413 Vietnamese (34,400 as women) who are holder of older documents (Reference to the 2002 survey);

Cat 2: there are 76,614 Vietnamese who possessed and used irregular Cambodian documents; and

Cat 3: there are 34,663 Vietnamese residing without legal documents in accordance with our immigration law as of July 2018. The Ministry is in the process to review those cases in accordance with the prevailing Cambodian and international laws.

With regards to children born of Vietnamese parents and living in Cambodia, they are considered as Vietnamese. These children are not stateless. Article 9 of the new Law on Nationality promulgated in 2018 provides that: "... 2- shall obtain Khmer nationality, by having been born in the Kingdom of Cambodia: a- any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia..."). Plainly speaking, only the child of the person born from a foreign mother and father (parents) who were born and living legally in Cambodia is entitled to Khmer Nationality.

NB: The 2018 Nationality Law abrogated the 1996 Nationality Law.

Vietnamese *Montagnards*

Adhering to the human rights principles found under national and international laws and conventions, particularly the *Statute of Refugees of 1951* ratified by Cambodia on October 15, 1992, the *Protocol relating to the Statute of Refugee of 1967* and *Sub-Decree No. 224 on the procedure in the recognition of refugee status or asylum seekers in the Kingdom of Cambodia*; all Vietnamese *Montagnards* are well protected and provided proper shelters and adequate foods. As of this report, there were 197 *montagnards* who came through Cambodia and have been resettled as follows:

(i) Seven *montagnards* (2 of them are women) have obtained a refugee status and have been resettled in a third country (Philippines) on 29 September 2017;

(ii) 104 *montagnards* (36 of them are women) have volunteered to return back to their origin country;

(iii) 57 *montagnards* (15 of them are women) have escaped from the holding camp; and

(iv) 31 *montagnards* (9 of them are women with 2 newborn babies) are still living inside Cambodia. We encourage the EU Mission to visit the site and inspect the shelters of these refugees at any time.

There is a case of 31 Vietnamese *Montagnards* where the Royal Government has allowed them to resettle in a third country. However, Vietnam has objected to the decision and filed a complaint to the UNHCR. As such, the Royal Government has agreed in principle to let UNHCR discuss the matter with Vietnam, prior to taking any further step. So far, Cambodia has not received any update on the outcome of such discussion. Pending any specific outcome, Cambodia would continue to hold these 31 Vietnamese *Montagnards* for the time being.

On Gender-based Violence

The Royal Government has made great efforts and achieved significant progress in term of establishing policies, legal framework and mechanisms at national and sub-national levels to respond to gender-based violence against women and children.

Cambodia ratified the *UN Convention on the Child rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the *Convention on the Child Rights* in 1992. Cambodia have submitted three periodic reports on the progress of the implementation of CEDAW to the UN Committee on CEDAW: the combined First, Second and Third Reports in 2005; the combined Fourth and Fifth Reports in 2013; the Sixth Report in 2017 awaiting response from the UN Committee on CEDAW.

The Sixth Report covered the 52 concluding observations raised by UN Committee on CEDAW. The government was asked to prepare a summary of the report prior to the Committee's provision of their comments.

According to the CCKC, rape and gender-based violence are regarded as serious crimes (Articles 222, 239, 246 and 250). There is no tolerance against this kind of criminal act and the perpetrators are prosecuted. Unfortunately, we are not able to provide statistics on the past prosecution because the court system does not have a system to identify the type of cases, being gender-based violence or physical violence. Compromise and mediation for

these types of criminal acts are prohibited and not encouraged by the government authority even for domestic violence cases. However, sexual violence or rape cases by intimate partners are slightly challenging for service providers to intervene because of the reluctance of the victims to seek help.

The *National Strategic Plan for Gender Equality and Women's Empowerment 2014-2018* is a five-year overarching policy to promote gender equality and women's empowerment in Cambodia and to guide efforts for gender mainstreaming across the government.This policy, which was developed under the leadership of the Ministry of Woman Affairs (MoWA) and in cooperation with line ministries, civil society organizations, and development partners, includes 9 key strategies to end violence against women and girls that are part of the *Strategic Area of Legal Protection for Women and Girls*.

The *Second National Action Plan to Prevent Violence Against Women (NAPVAW II) 2014-2018* is a key policy to end violence against women and girls. This Action Plan comprises 5 strategies and 16 sub-strategies, which are crucial to stop violence against women, such as primary prevention, legal protection and prosecution, and improvement of service delivery to gender-based-violence (GBV) survivors and their children. It also includes a strong Results Based Management framework with 56 outputs, indicators and means of verification, as well as a sound Monitoring and Evaluation System. It is currently being implemented and monitored through a high-level technical working group to address Violence against Women. The working group, led by MoWA, was established in 2012 and includes 15 line ministries, 30 CSOs/NGOs and 10 development partners.

MoWA in collaboration with line ministries, development partners and civil society have made a lot of efforts to combat violence through law dissemination and enforcement, including a 16 Days Campaign for the Prevention of Violence. MoWA has developed many policies and guidelines for service providers to use when supporting victims. In 2015, MoWA with support from UN Women, UNFPA, GIZ, Care and WHO conducted a National Study on Women's Health and Life Experience in Cambodia. In response to the study findings MoWA developed many new policies and guidelines and conducted many trainings, including the following:

- National Guidelines for managing Violence Against Women and Children in the Health System, and accompanying clinical handbook for health providers;
- A comprehensive training manual on providing health care to survivors of violence against women;
- National TOT training for an interdisciplinary team of national trainers (Subsequently this team provided some capacity building to the sub-national levels);
- Issuance (free of charge) of Forensic Examination Certificate by the Forensic Examination Committee;
- Around 1,200 victims of domestic violence and sexual abuse received legal advice and representation to proceed with matters through the formal legal system;
- National budget for the services support for women and girls subject to gender-based violence is increased from 200 Million Riels to 500 Million Riels per year;
- Guidelines for Legal Protection of Women's and Children's Rights in Cambodia;
- Minimum Standards for Basic Counseling for Women and Girl Survivors of gender-based violence were launched and implementing by the service providers [2016];
- Referral Guidelines for Women and Girl Survivors of gender-based violence [2016];
- Manual on Case Management with survivors of gender-based violence for the service providers [2017];
- Under primary prevention on Violence against Women, MoWA with technical support from UNFPA and P4P developed and implemented the manual for caregivers and adolescent. As a result, an evaluation showed promising behavior change among participants and especially for the local volunteer facilitators. Both

manuals have been revised based on recommendations from the actual implementation and is being oriented to staff of 4 Provincial Department of Women's Affairs and relevant CSOs who work in this area to continue using this model intervention.

- With support from partners, MoWA has initiated to established 6 sub-national multi-sectoral response to women survivors of violence. This mechanism is under the existing of Women and Children Consultative Committee (WCCC) and under the leadership of the Deputy Provincial Governor.

13,000 women and their families have received counseling services and over 2000 women were assisted with employment and vocational training.

On Accusation of Lengthy pre-trial detention and arbitrary confinement of prisoners

In principle, the charged person shall remain at liberty. However, the charged person may be provisionally detained under the conditions stated in Article 205 of the CCPKC and the decision on the pre-trial detention is under the competent authority of the investigating judge in compliance with the CCPKC (Articles 203 to 222). According to Article 208 of the CCPKC, this provisional detention is six-month and can be extended twice, for a maximum period of six months each time. The length of detention as determined by the investigating judge shall be used to conduct the investigation in accordance with the Code of Criminal Procedure for a period of up to 18 months.

The period of provisional detention in felony cases as stipulated in the CCPKC is similar to the period of detention for felony cases in some countries in the world. In the case of the French provisional detention for serious felony, the maximum period can be up to 24 months or more.

Like many developing countries, Cambodia is in the stage of conducting its penal reform including prison reform. Due to increasing number of arrests and prosecutions as a result of the Royal Government's antidrug campaign since the beginning of 2017. Between 2015–2018, a total of 687.4 tons of counterfeit drugs, merchandises, cosmetics, food and other items have been confiscated, among which 316.9 tons were destroyed.

The number of inmates has increased accordingly from 20,997 in December 2016 to 28,391 in December 2017, a year-on-year increase by 35%. As of May 28, 2018, the total number of inmates was 29,829, out of which the number of convicted inmates with final judgment papers is only 7,684 (26%). Lengthy trial detentions are a direct result of large amount of cases and a low number of judges, prosecutors, and defense attorneys while law enforcement agencies are making more arrests, particularly drug related offenders. The DGP acknowledges the issue of arbitrary confinement of prisoners after the end of their sentences due to the absence of releasing orders from the court, even though the number of such incident is less than 1%. Lengthy pre-trial detention and arbitrary confinement of prisoners after their sentences have been completed at times took place because the final court judgments have not been communicated to the prison authorities. Prison directors are instructed to work closely with the court to notify beforehand those whose sentences are reaching their final days to issue releasing papers on time. The Royal Government is also considering alternative to imprisonment and community-based treatments of offenders starting with juvenile delinquents (the "*Tokyo Rules and Penal Code 2009*").

On Child abuse

According to the CCKC, the age for sexual majority is set at 15 years, all acts of rape, prostitution, sexual abuse on minor below 15 shall be considered as severe crimes and punishable with imprisonment from 7 to 15 years. Indecent acts on minor below 15 shall be punished with imprisonment from 1 to 3 years. Perpetrators of child and sexual abuse and sexual exploitation are criminally liable and prosecuted to the full extent of the law. The *National Committee for Counter Trafficking (NCCT)* issued Guideline No. 001 that defines the measures to be taken for each offense. Moreover, to enforce the Law on Human Trafficking, the Ministry of Justice has issued the following:

- *Guidelines on the Use of Court Screen and TV-Linked Testimony from the Child/Vulnerable Victims or Witnesses*;

- *Guidelines No. 01/09 dated February 23, 2009 on the Implementation of Articles 42 and 43 of the Human Trafficking Law;*
- *Explanatory Note for the Human Trafficking Law 2013 that describe explicitly the general concept and the principle of each article.*

Moreover, the Royal Government has established the COMMIT Working Group to coordinate all activities related to human trafficking and migration at national and regional level. The Law on Tourism 2009 stipulates for the shared responsibility between the Ministry of Tourism and other ministries, institutions and related authorities in the prevention of sexual exploitation in tourism. For example, Article 48 para. E and F of the Law on Tourism stipulate that the manager of hotels or guesthouses should immediately file a complaint or report to the nearest Tourist Police, tourist authority or a competent authority in case of having known or suspected human trafficking and confinement, child trafficking and sexual exploitation/prostitution, disseminations of pornographic pictures and materials or other criminal offences. He/she should register the identity and other information of all guests upon the beginning of their stay.

Minors are prohibited from the premises of an adult tourism entertainment centre, and the managers and licensees of adult entertainment centres must ban and take reasonable measures to ensure that no minors are present.

Lastly, MoSAVY has adopted policies regarding the *Protection of the Rights of Victims of Human Trafficking* and the *Minimum Standards on the Protection of the Rights of Victims of Human Trafficking*.

In sum, the Royal Government is fully committed to uphold a violence-free society, especially for children and adults who should be protected from any form of abuses, violence and/or corporal punishment.

Comments from Ministry of Interior

- Comment to Para 32. Such accident did not happen in Oddar Meanchey province
- Comment to Para 36. There was already a preliminary clarification report regarding the situation room.
- Comment to Para 39. To avoid any confusion, a notification has stated that NGOs which had registered in compliance with the laws can operate its activities as determined in terms and conditions without requesting for permission from local authorities. For other activities which not mentioned in the above terms and conditions, shall inform 03 (three) days to the competent authorities before operation.
- Comment to Para 47. There was no arrest as raised in this point.
- Comment to Para 49.

There was no obstruction; all legal measures were taken in order to protect security and order of the court during the trial.

There was no summon to an ex-CNRP commune council member for questioning at police station in Battambang province.

- Comment to Para 50. In the purpose of ensuring social security and public order only.
- Comment to Para 59. There was no arrest of citizen as raised in this point.
- Comments to Para 60/61/62: There were no intimidation and harassment in exercising of right to vote of citizens as raised in these 3 points.
- Comment to Para 88. There were no any action or intimidation to voters who were boycotted the election, obviously among voters who have right to vote and have registered in the voters lists of the NEC, there were 16% who did not go to vote, but there was no any intimidation or persecution.